STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	**20-0393**
Petition to Initiate Annual Formula Rate	**:**	
Update and Revenue Requirement	**:**	
Reconciliation under Section 16-108.5	**:**	
of the Public Utilities Act.	**:**	

ORDER

December 9, 2020

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By the Commission:

I. PROCEDURAL HISTORY

On April 16, 2020, Commonwealth Edison Company ("ComEd" or "the Company") filed with the Illinois Commerce Commission (the "Commission") ComEd's annual formula rate update ("FRU") and revenue requirement reconciliation and requested that the Commission authorize and direct ComEd to make the compliance filings necessary to place into effect the resulting charges to be applicable to delivery services provided by ComEd beginning on the first day of ComEd's January 2021 billing period, as authorized by Section 16-108.5(d) of the Public Utilities Act (the "Act" or "PUA"). 220 ILCS 5/16-108.5(d).

ComEd's filing, consistent with Section 16-108.5(d)(1), included: (1) updated inputs to the performance-based formula rate for the applicable rate year (2021) that are based on final historical data reflected in the utility's most recently filed annual FERC Form 1 (for 2019) plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed (2020); and (2) a reconciliation of the revenue requirement that was in effect for the prior rate year (2019) (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (as reflected in the applicable FERC Form 1 (for 2019) that reports the actual costs for the prior rate year).

The filing, consistent with Section 16-108.5(d)(1), also included: (1) a corporate officer certification relating to reconciliation Schedule "Sch FR A-1 REC" and (2) the new delivery services charges corresponding to the updated costs and reconciled revenue requirement.

Statutorily, this docket must conclude by December 12, 2020. 220 ILCS 5/16-108.5(d)(3).

The following ComEd witnesses testified in this case: Susan L. Tracy; John Hengtgen; Joseph D'Antonio; Nicole Owens; Peter Tyschenko[1]; Frank A. Luedtke; John L. Leick; Nickolaos Z. Bafaloukos; Gerald Kozel; and Larry Kennedy.

The following Commission Staff ("Staff") witnesses testified in this case: Scott Tolsdorf; Dianna Trost; Rochelle M. Phipps; and Christopher L. Boggs.

The Illinois Attorney General on behalf of the People of the State of Illinois ("AG") sponsored the testimony of Mary E. Selvaggio and David J. Garrett. The Illinois Industrial Energy Consumers and Citizens Utility Board ("IIEC/CUB") jointly sponsored the testimony of Brian C. Andrews.

An evidentiary hearing was convened in this docket via videoconference before a duly authorized Administrative Law Judge ("ALJ") on September 10, 2020. At the conclusion of the hearing, the record was marked "Heard and Taken." Staff, the AG, ComEd, and IIEC/CUB filed Initial Briefs on September 28, 2020. Reply Briefs were filed on October 13, 2020 by the same parties. The parties filed Position Statements on October 14, 2020.

On October 30, 2020, a Proposed Order was served on the parties. On November 9, 2020, ComEd and IIEC/CUB filed Briefs on Exceptions ("BOEs"). The AG filed a BOE and a Request for Oral Argument on the same day. On November 18, 2020, the Commission granted the AG's Request for Oral Argument. Also on November 18, 2020, Staff and ComEd filed Reply Briefs on Exceptions. On November 19, 2020, the AG filed a Motion for Leave to Cite Additional Authority. On November 23, 2020, the ALJ denied the Motion.

On November 30, 2020, the Commission held Oral Argument in this proceeding.

II. APPLICABLE AUTHORITY

Section 16-108(c) of the PUA provides that:

> Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs. Such costs shall include the costs of owning, operating and maintaining transmission and distribution facilities.

220 ILCS 5/16-108(c). In other words, ComEd's Commission-approved rates must allow ComEd to recover its prudently incurred and reasonable costs of providing delivery services. 220 ILCS 5/16-108; 5/16-108.5(c)(1). ComEd's approved delivery services tariff and rate formula, and several Commission decisions, recognize that the costs of providing delivery services include the costs of customer service functions that facilitate customers' ability to take and use the energy ComEd delivers safely, efficiently, and in an informed manner, as well as costs associated with participation in programs that allow

[1] ComEd witness Peter Tyschenko adopted the direct testimony of Mr. Michael C. Moy. *See* ComEd Ex. 10.0 at 16; *see generally* ComEd Ex. 5.0.

customers to exercise choices in their energy supply. *See e.g.*, *Commonwealth Edison Co.*, Docket No. 18-0753, Order (Nov. 26, 2018) (approving ComEd's Rider DG Rebate and corresponding revisions to Rider POGNM); *Commonwealth Edison Co.*, Docket No. 17-0350, Order (Sep. 27, 2017)).

Section 16-108.5 establishes the annual process by which ComEd's revenue requirements are first estimated for each rate year, and then finally fixed and reconciled when actual investments and costs are known. The objective is to:

> ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

220 ILCS 5/16-108.5(d)(1). That Section also requires each FRU proceeding to include both (a) a final reconciliation of the revenue requirement "for the prior rate year" based on actual costs, and (b) a provisional revenue requirement for the following calendar year based partially on projections that will be reconciled two years later. *Id.* Section 16-108.5 requires ComEd to base those projections on "historical data reflected in the utility's most recently filed annual FERC Form 1, plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed." *Id*. And, it couples each forecast revenue requirement with a subsequent after-the-fact reconciliation, including appropriate interest, in the end, the rates for each year are based purely on actual, reasonable, and prudent costs of service.

ComEd states the statutory purpose of this proceeding is to "evaluate the prudence and reasonableness of the costs incurred by [ComEd] to be recovered during the applicable rate year," in order to set rates providing ComEd that opportunity. 220 ILCS 5/16-108.5(d). To do that, ComEd explains, the Commission should consider evidence germane to the quantification, reasonableness, and prudence of ComEd's costs, and "determine that the rates accurately reflect the cost of service delivery and must allow the utility to recover costs prudently and reasonably incurred." *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2d 111, 121 (1995).

ComEd asserts that an action is prudent if the utility exercises the standard of care that a reasonable person would exercise under the same circumstances. *Ill. Power Co. v. Ill. Commerce Comm'n*, 382 Ill. App. 3d 195, 201 (3d Dist., 2008); *see also* 220 ILCS 5/9-211 ("The Commission, in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers"). The determination of prudence cannot involve hindsight. *Ill. Power Co. v. Ill. Commerce Comm'n*, 339 Ill. App. 3d 425, 428 (5th Dist., 2003). Nor must an action be deemed optimal by a regulator to be prudent. *Commonwealth Edison Co*., Docket No. 16-0259, Order at 15 (Dec. 6, 2016) ("[T]o be imprudent, an action or omission must not only be shown to have been wrong, but to have been outside the realm of reasoned disagreement based on the information available at the time it was made.").

III. OVERALL REVENUE REQUIREMENT

This FRU proceeding sets ComEd's retail delivery rates applicable to 2021 billing periods based on ComEd's 2021 Rate Year Net Revenue Requirement. Those rates will recover the balance of ComEd's fully reconciled actual costs for 2019 as well as ComEd's projected 2020 costs, subject to later reconciliation. The 2021 Rate Year Revenue Requirement, therefore, includes an Initial Rate Year Revenue Requirement, which quantifies the projected cost of providing delivery services for the 2021 rate year, and the Reconciliation Adjustment, which quantifies the difference between the initial revenue requirement and the actual cost of service for the year being reconciled. ComEd presented substantial evidence supporting its revenue requirement through the testimony of its witnesses and the attachments, schedules, and exhibits they sponsored.

During the course of the proceeding, Staff, the AG and IIEC/CUB proposed adjustments and changes to the Company's proposed revenue requirements. ComEd accepted some of these adjustments and changes. The Commission's determination on the subject of rate base and the derivative expense issues are reflected and set forth below in the applicable sections of this Order.

A. 2021 Initial Rate Year Revenue Requirement

ComEd proposed its 2021 Initial Rate Year Revenue Requirement as $2,679,458,000. ComEd Ex. 13.01, Sch FR A-1, line 23. This revenue requirement represents a reduction of approximately $13.6 million in comparison to existing rates. The Commission approves the 2021 Rate Year Revenue Requirement of $2,679,191,000 (Appendix A, Sch. 1 FY, line 1) based on the extensive evidence in the record and the reasons indicated below, with respect to the contested issues.

B. 2019 Reconciliation Adjustment

ComEd proposed its 2019 Reconciliation Adjustment, including interest, of ($22,160,000). ComEd Ex. 13.01, Sch FR A-1, line 24. The Commission approves the 2019 Reconciliation Revenue Requirement of $2,588,071,000 based on the evidence in the record and the reasons indicated below, with respect to the contested issues. Appendix A, Sch. 8 FY, line 1a. ComEd's Initial Rate Year Revenue Requirement in effect during 2019 was $2,578,774,000, resulting in a reconciliation adjustment, including interest, of $(22,276,000). Appendix A, Sch. 8 FY, line 31.

The Commission therefore approves ($22,276,000) as the 2019 Reconciliation adjustment, including interest.

C. ROE Collar and ROE Penalty Calculation

ComEd states that its jurisdictional return on equity ("ROE") is a measure of the income ComEd earns in relation to shareholders' equity. ComEd Ex. 1.0 CORR at 14. Section 16-108.5(c)(5) of the PUA creates a collar that sets upper and lower boundaries on the potential difference between (a) the actual ROE ComEd earns in a Rate Year and (b) the ROE calculated under the statutory formula set forth in Section 16-108.5(c)(3) of the PUA. *See* 220 ILCS 5/16-108.5(c)(5). ComEd uses a zero basis point ROE collar adjustment calculation, to ensure that ComEd's revenue matches its authorized prior year revenue requirement, without regard to outside factors like weather or changes in load or demand, which could cause actual revenues to deviate from the revenue requirement rates were designed to recover.

The Commission approves the ROE collar calculation of $8,945,000 based on the evidence in the record. Appendix A, Sch. 9 FY, line 36.

D. 2021 Rate Year Net Revenue Requirement

Based on the foregoing, the Commission approves the 2021 Rate Year Net Revenue Requirement, reflecting adjustments, of $2,665,859,000. Appendix A, Sch. 1 FY, line 5.

IV. RATE BASE

A. Overview

ComEd proposed its 2019 Reconciliation Year Rate Base and its 2021 Initial Rate Year Rate Base through the testimony of multiple witnesses. With the exception of the AG's proposals related to projected plant additions, which are addressed below, no witness proposes any rate base disallowance. The Commission conclusions on contested issues are discussed below.

1. 2019 Reconciliation Rate Base

ComEd proposed a 2019 Reconciliation Year Rate Base, as adjusted during the course of this proceeding, of $11,066,831,000. ComEd Ex. 13.01, Sch. FR B-1, line 28. After considering the evidence presented by the parties in the case, the Commission approves a 2019 Reconciliation Year Rate Base of $11,066,296,000 (Appendix B, Sch. 3 RY, line 24) based on the evidence in the record.

2. 2021 Initial Rate Year Rate Base

ComEd proposed a 2021 Initial Rate Year Rate Base, as adjusted during the course of this proceeding, of $12,050,339,000. ComEd Ex. 13.01, Sch. FR B-1, line 36. After considering the evidence presented by the parties in the case, the Commission approves a 2021 Initial Rate Year Rate Base of $12,048,960,000 (Appendix A, Sch. 3 FY, line 24) based on the evidence in the record.

B. Uncontested Issues

1. Accumulated Provisions for Depreciation and Amortization

The total amount of accumulated depreciation related to ComEd's rate base, as of December 31, 2019, was $7,750,560,000. This total was comprised of $6,477,586,000 related to Distribution Plant and $1,272,974,000 related to General and Intangible Plant. ComEd Ex. 13.01, Sch. FR B-1, lines 7-12. ComEd's Accumulated Provisions for Depreciation and Amortization related to ComEd's rate base were uncontested. The Commission approves this component of rate base.

2. Plant In Service

ComEd's Plant in Service in rate base for the 2019 Reconciliation Revenue Requirement and the 2021 Initial Rate Year Revenue Requirement are uncontested. ComEd's properly calculated level of electric utility plant in service at original cost in rate base as of December 31, 2019, before projected plant additions, is $11,066,831,000. ComEd Ex. 13.01, Sch. FR B-1, line 28. In addition, ComEd requests that the Commission make an original cost finding in this proceeding to approve the original cost of plant in service as of December 31, 2019, before adjustments. This request is discussed in greater detail below.

ComEd's 2020 projected plant additions consist of $1,382,247,000 of Distribution Plant additions, and $268,707,000 of General and Intangible Plant additions. ComEd Ex. 13.01, Sch. FR B-1, lines 29, 31. These additions, which total $983,508,000, net of projected adjustments for accumulated reserve, Accumulated Deferred Income Taxes ("ADIT"), and cash working capital are expected to be in-service as of December 31, 2020. *See id.*, line 35. These additions were described in accordance with 83 Ill. Adm. Code 285.6100. ComEd Ex. 5.01.

ComEd demonstrated that its Distribution Plant, General Plant, and Intangible Plant assets in service at year-end 2019 were prudently acquired at a reasonable cost and are used and useful. ComEd also showed that the additional assets projected to be included in Distribution Plant that are included in the 2020 Initial Rate Year revenue requirement are being, or will be, acquired prudently and at reasonable cost, consistent with the costs of well-managed projects. They also are reasonably expected to be used by ComEd in the provision of delivery services to its customers by December 31, 2020 and are necessary to provide such services.

There is no dispute among the parties with respect to the majority of ComEd's 2020 projected plant additions. The AG recommends a blanket adjustment to reduce the overall level of projected plant, and adjustments to remove specific projected plant additions related to Marketplace 2.0 and certain voluntary services to support community solar projects. With the exception of these issues, which are addressed in detail below, these facts are uncontested. The Commission therefore approves the foregoing Plant in Service costs.

3. Construction Work In Progress

ComEd's Construction Work in Progress ("CWIP") for the 2019 Reconciliation year rate base is uncontested. ComEd has included approximately $18,066,000 of CWIP in its rate base for the 2019 Reconciliation Revenue Requirement for projects that do not accrue AFUDC. ComEd has demonstrated that the level of CWIP included in ComEd's reconciliation rate base is prudent, reasonable, and representative of ComEd's current construction activities. Therefore, the Commission approves this component of the rate base.

4. Property Held for Future Use

There is no property held for future use included in ComEd's jurisdictional rate base.

5. Cash Working Capital

The Cash Working Capital ("CWC") reflected in ComEd's rate base is the amount of cash that is appropriate for ComEd to maintain in order to meet its expenses and other cash outflow obligations. ComEd determines the appropriate amount of CWC based on a lead/lag study, which is an analysis of the timing of applicable cash inflows to and cash outflows from a utility. ComEd Ex. 13.01, App 3. ComEd presented updated leads and lags, and no party disputed those updated values.

ComEd's filing year rate base includes a decrease of $2,244,000 for CWC. ComEd Ex. 13.01, Sch. FR B-1, line 34a; ComEd Ex. 13.01, App 3, line 81. The resulting CWC is uncontested and is approved.

6. Accumulated Deferred Income Taxes

The appropriate level of ADIT to be deducted from rate base as of December 31, 2019, is $4,630,989,000, after adjustments. ComEd Ex. 13.01, Sch FR B-1, line 17. This amount was derived through an analysis of the components of the deferred tax balances, which are then either directly assigned or allocated based on the assignment or allocation of the operating items to which they relate. The 2019 ADIT balance is reflective of the current year deduction under the safe harbor method of tax accounting for repair costs. ComEd Ex. 13.01, App 4, column D, line 11. The jurisdictional amounts allocated to delivery services, and their derivation, are uncontested and comply with the determinations of the Commission and the courts concerning the issue. They are therefore approved.

7. Materials and Supplies

ComEd's Materials and Supplies ("M&S") include items purchased primarily for use in the construction and maintenance of utility property, including building and construction materials, hand tools, and paints and adhesives. ComEd included in its rate base the year-end balance of M&S, less the associated accounts payable. The net amount of M&S included in rate base is $74,784,000. ComEd Ex. 13.01, Sch. Fr B-1, line 18. This amount is uncontested and is approved.

8. Other Assets and Liabilities

a. Assets

Other assets typically represent costs ComEd has incurred, but has not yet recovered, and which increase rate base. ComEd states it has included three categories of other assets in rate base: regulatory assets, deferred debits, and other deferred charges consisting of unamortized balances of certain one-time expenses in excess of $10 million. None of these amounts are contested, and they are therefore approved.

First, ComEd included in its 2019 Reconciliation Revenue Requirement rate base and 2021 Initial Rate Year Revenue Requirement rate base Regulatory Assets amounting to $119,536,000. ComEd Ex. 13.01, Sch. FR B-1, line 19. That total is comprised of: (i) a regulatory asset representing the unamortized balance (as of year-end 2019) of $6,172,000 for capitalized incentive compensation costs that was approved by the Commission in its final Order in ComEd's 2001 rate case, Docket No. 01-0423; (ii) unrecovered costs of $50,000 related to ComEd's advanced metering infrastructure

("AMI") pilot approved by the Commission in Docket No. 10-0467; and (iii) the unrecovered balance of the accelerated depreciation associated with ComEd's AMI investment (apart from the AMI Pilot) of $113,314,000. These facts are uncontested. Therefore, the Commission approves this component of rate base.

Second, ComEd included in its 2019 Reconciliation Revenue Requirement rate base and its 2021 Initial Rate Year Revenue Requirement rate base deferred debits totaling $84,962,000. ComEd Ex. 13.01, Sch. FR B-1, line 20. This sum includes: (i) Cook County Forest Preserve fees of $4,237,000, related to licensing fees for distribution lines; (ii) a Long Term Receivable from the Mutual Beneficial Association Plan of $587,000, which relates to payments that ComEd has made to the trust on behalf of union employees for short term disability and for which it is awaiting reimbursement; (iii) a deferred debit associated with ComEd's capitalized vacation pay not included in plant-in-service of $18,123,000; (iv) expected recoveries from insurance on claims made by the public against ComEd of $60,717,000; (v) pre-payments of $573,000 under contracts to secure rights to renewable Distributed Energy Resources for the Bronzeville Community Microgrid; and (vi) payments to the Commission of $725,000 for authorization fees related to future long-term debt issuances. The Deferred Debits for the 2019 Reconciliation Revenue Requirement rate base and the 2021 Initial Rate Year Revenue Requirement rate base are uncontested and therefore approved.

Third, ComEd included in its 2019 Reconciliation Revenue Requirement rate base and 2021 Initial Rate Year Revenue Requirement rate base the unamortized balances of certain one-time expenses in excess of $10 million. ComEd has removed certain storm, merger, non-recurring upgrade, repair or replacement expenses to install AMI meters, and Emerald Ash Borer risk mitigation program expenses, from its operating expenses and instead amortized them over a five-year period, as required by Section 16-108.5(c)(4)(F). The total unamortized balance related to these expenses is $66,143,000. ComEd Ex. 13.01, Sch. FR B-1, line 24; App 5 lines 31-33.

In particular, ComEd is amortizing over five years the expense of one 2018 storm, which exceeded $10 million. This storm resulted in expenses of $25,981,000. The unamortized balance of the 2018 storm expense, $15,588,000, is included in rate base. *Id.* No storms incurred expenses greater than $10 million in 2019.

In 2016, ComEd incurred merger expenses of $10,584,000 and is amortizing these amounts over five years. *Id.* at line 30. The unamortized balance of the 2016 merger expenses, $2,117,000, is included in ComEd's rate base.

In 2016, 2017, and 2018, ComEd incurred $29,309,000, $21,441,000, and $17,197,000 respectively, of costs related to non-recurring A-base meter upgrades and other electrician repairs and replacements required as part of the smart meter deployment plan. Each amount is being amortized over five years. The unamortized balance of $24,756,000 related to these expenses is included on ComEd Ex. 13.01, Sch. FR B-1, line 24, and additional detail is provided on ComEd Ex, 13.02, WP 8.

Finally, in 2017, 2018, and 2019 ComEd incurred $12,003,000, $12,906,000, and $13,922,000, respectively, of costs related to a mitigation program to address the unique issue of Emerald Ash Borer tree infestation. Emerald Ash Borer is an invasive insect that inhabits and infects Ash trees causing mortality and resulting in risk of branch breakage and trunk failure. The mitigation program serves to minimize service interruptions and safety risks by topping, trimming, or removing affected trees. The unamortized balance of $23,682,000 related to these expenses is included on ComEd Ex. 13.01, Sch. FR B-1, line 24, and additional detail is provided on ComEd Ex, 1.02, WP 8.

No party contested these issues. The Commission therefore approves this component of rate base.

b. Liabilities

Other liabilities typically refer to costs that ComEd has not yet incurred, but with respect to which ComEd has recovered some amounts through delivery services charges and are a reduction to rate base. The other liabilities, after adjustments, included in rate base are Operating Reserves of $299,862,000, Asset Retirement Obligations of $20,110,000, and Deferred Credits of $94,864,000. ComEd Ex. 13.01, Sch. FR B-1, lines 21-23. ComEd asserts that it has included three categories of other year-end 2018 liabilities in rate base: operating reserves, asset retirement obligations, and deferred credits.

First, ComEd included in its 2019 Reconciliation Revenue Requirement rate base and its 2021 Initial Rate Year Revenue Requirement rate base Operating Reserves reducing ComEd's rate base total $299,862,000. These jurisdictional amounts consist of the following: (i) Other Post Employee Benefits and other benefits of $158,528,000; (ii) injuries and damages of $111,553,000 related to workers' compensation and public claims; (iii) other miscellaneous environmental liabilities of $600,000, primarily related to the reserve for the remediation of Superfund sites; and (iv) management retention and incentive liabilities of $2,181,000.

Second, ComEd included in its 2019 Reconciliation Revenue Requirement rate base and its 2021 Initial Rate Year Revenue Requirement rate base the delivery services jurisdictional amount of Asset Retirement Obligations of $20,110,000 in Account 230. This amount represents asset removal costs recovered through depreciation expense. ComEd Ex. 13.01, Sch. FR B-1, line 22.

Third, ComEd included in its 2019 Reconciliation Revenue Requirement rate base and its 2021 Initial Rate Year Revenue Requirement rate base Deferred Credits that reduce rate base by a total of $94,864,000. ComEd Ex. 13.01, Sch. FR B-1, line 23; ComEd Ex. 13.02, WP 5. The deferred credits recorded in FERC Account 253 include $739,000 for deferred rents and $474,000 for post-retirement benefit obligations.

None of these amounts are contested, and they are therefore approved.

9. Customer Deposits

ComEd receives refundable deposits from certain new customers as a condition of initiating electric service. ComEd applied its year-end 2019 balance of customer deposits as a reduction to rate base of $117,645,000. ComEd Ex. 13.01, Sch. FR B-1, line 25. This item is uncontested, and the Commission therefore approves this component of rate base.

10. Customer Advances

ComEd receives refundable distribution system extension deposits from customers under the terms of Rider DE – Distribution System Extensions as customer advances to begin construction. ComEd has reduced rate base for these deposits as of December 31, 2019, in the amount of $165,292,000. ComEd Ex. 13.01, Sch. FR B-1, line 26; ComEd Ex. 13.01, App 1 lines 23-30. This figure is uncontested and therefore approved by the Commission.

C. Contested Issues

1. 2020 Projected Plant Additions

a. 2020 Plant Additions for Marketplace 2.0

(i) ComEd's Position

ComEd states that it included in 2020 projected plant additions amounts related to the development of the Marketplace 2.0 platform, the features of which are discussed in detail in Section V.B., below. ComEd explains that these projected plant additions represent investment in IT infrastructure and business processes necessary to bring the existing Marketplace in-house at ComEd, and that the Marketplace 2.0 platform will expand ComEd's capabilities to aid customers in managing and controlling their energy use. The platform will more readily integrate with other existing and yet-to-be-developed ComEd proprietary tools, functions, and data, enabling ComEd to meet its customers' evolving needs and expectations.

ComEd notes that the AG advanced a series of arguments in support of the notion that costs related to Marketplace 2.0 should be excluded from 2020 projected plant additions. ComEd states each argument has been rejected by the Commission in past cases, and the AG has offered no rationale that would support a different outcome here. ComEd concludes the AG's proposal should be rejected.

First, ComEd notes that the AG argued ComEd's investment in Marketplace 2.0 was imprudent because the Marketplace has "consistently failed to cover its costs" since its debut in 2016. ComEd states that the AG acknowledged the Commission's prior findings that prudence is unrelated to profitability but offered no legal authority or policy analysis that would support a different conclusion in this case. ComEd contends the Commission has been clear in a series of Orders that "profitability of individual utility programs is not a factor in the Commission's evaluation of prudence and reasonableness." *Commonwealth Edison Co*., Docket No. 18-0808, Order at 40 (Dec. 4, 2018); *see also Commonwealth Edison Co*., Docket No. 17-1096, Order at 35 (Dec. 6, 2017) (noting "the Commission [] does not generally look to the profitability of specific utility programs in determining whether expenses are prudent and reasonable"). ComEd further asserts that the Commission does not apply a profitability standard when evaluating the prudence and reasonableness of any other component of utility service, and that it would be unreasonable to do so; if every component of utility service was subject to such a standard, there would be no costs to recover in rates. ComEd states the AG cannot and does not dispute these core principles and provides no rationale that would support reversal in this case.

Second, ComEd notes the AG contends that the investment in Marketplace 2.0 should be excluded from projected plant additions because it is redundant of other customer service and education initiatives. ComEd maintains the Commission has also soundly rejected this argument in past proceedings, finding that "[t]he fact that the energy-related information or access to products is available through other resources does not *ipso facto* negate these benefits [of the Marketplace]." *Commonwealth Edison Co*., Docket No. 17-0196, Order at 34-35 (Dec. 6, 2017). ComEd explains that the Marketplace packages information about rates, programs, and initiatives with information about energy-related products, providing customers with access to information at the moment they need it, or perhaps even with information they did not intend to access at all.

Third, ComEd notes that the AG argues Marketplace 2.0 should be excluded from projected plant additions because "utility service must be provided at the least cost." AG Init Br. at 12, *citing* 220 ILCS 5/1-102. ComEd again points out that the Commission has rejected this mischaracterization of the law, finding that "providing services in the 'least cost' means does not prohibit innovation or improvements to utility services." *Commonwealth Edison Co*., Docket No. 17-0196, Order at 35 (Dec. 6, 2017), *citing Ameren Transmission Co. of Ill*., Docket No. 15-0278, Order at 13 (Nov. 12, 2015), *Ameren Transmission Co. of Ill*., Docket No. 12-0598, Order at 76-78 (Aug. 20, 2013). ComEd maintains the Commission has also consistently found that the Marketplace is an appropriate component of ComEd's customer service, and specifically recognized that customers "actually use and perhaps may prefer" to obtain information via the Marketplace. *See Commonwealth Edison Co*., Docket No. 18-0808, Order at 34-35 (Dec. 4, 2018). ComEd states the Marketplace embodies just such an improvement in utility service, and there is no evidence that its costs are unreasonable or improper.

Fourth, ComEd notes that the AG asserts that Marketplace 2.0 "does not appear likely to offer any additional customer service options." AG Init. Br. at 12-13. ComEd states that this argument simply ignores a significant body of record evidence concerning the functionality and purpose of Marketplace 2.0. ComEd explains, as the Commission has found repeatedly over the years, the Marketplace is at its core a customer service channel. *Commonwealth Edison Co.,* Docket No. 17-0196, Order at 34 (Dec. 6, 2017) (recognizing the "connection between the Marketplace and the provision of delivery services," and finding that the Marketplace functioned as a component of ComEd's customer services and supported the provision of public utility service); *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 28, 40 (Dec. 4, 2018) (finding that the Marketplace offers "real and quantifiable" benefits to customers, because it is "an easy, user-friendly platform for customers to engage in learning about and purchasing energy efficient products," and explaining that "the Commission is not inclined to dissuade ComEd from developing and providing its customers with services that customers actually use and perhaps may prefer"). ComEd explains that the Marketplace 2.0 platform is intended to provide a better, more informative experience to customers, in line with its core customer service purposes.

Finally, ComEd notes that, as an alternative to the AG's "primary" position that all Marketplace costs should be disallowed, the AG proposed that ComEd should be permitted to recover in delivery services rates only 10% of the cost of 2020 projected plant additions for Marketplace 2.0.[2] Although AG witness Selvaggio originally implied that the remaining 90% of the Marketplace 2.0 projected plant additions would be allocated to ComEd's energy efficiency revenue requirement, and the AG participated in, and had an opportunity to recommend a parallel adjustment in, ComEd's pending energy efficiency revenue requirement update proceeding, Docket No. 20-0475, ComEd states that the AG failed to do so. As Staff witness Tolsdorf explained, "the AG's proposal to remove a portion of the Marketplace costs from delivery services without a corresponding adjustment to include those costs in the energy efficiency docket results in an *ipso facto* disallowance of costs that no party has challenged as unreasonable." *Commonwealth Edison Co.,* Docket No. 20-0475, Order (Sep 9, 2020); Staff Ex. 3.0 at 12. ComEd contends that, for this reason alone, the Commission should reject the AG's proposal to adjust ComEd's 2020 projected plant additions for Marketplace 2.0.

ComEd concludes the investment in Marketplace 2.0 is prudent, its costs are reasonable, and it should not be excluded from projected plant additions.

(ii) AG's Position

The AG challenges the approximately $3.0 million to fund Marketplace 2.0 that ComEd included in its 2020 delivery services jurisdictional projected plant. AG Ex. 1.0 at 14-15. The AG points out that ComEd proposes to increase its investment in this project despite the fact that revenues from the Marketplace have failed to cover the costs that are already included in delivery rates. *Id.* at 18.

The AG cites governing law that to be included in a utility's rate base, investments must be "both prudently incurred and used and useful in providing service to public utility customers." 220 ILCS 5/9-211. Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. *Ill. Power Co. v. Ill. Commerce Comm'n*, 245 Ill. App. 3d 367, 371 (3d Dist. 1993). The Commission has "considerable discretion" in determining whether an investment is "used and useful," but courts have generally upheld the exclusion of investments from the rate base if the investments will not help to meet present or future service requirements. *Candlewick Lake Utils. Co. v. Ill. Commerce Comm'n*, 122 Ill. App. 3d 219, 223-24 (2d Dist. 1983). The AG asserts that ComEd fails to satisfy either requirement and that a reasonable person would not have decided to invest in Marketplace 2.0 when it has not covered its past costs and the site is not needed to meet future service requirements.

The AG explains that ComEd's investment in Marketplace 2.0 is not being prudently incurred because the platform has consistently failed to cover its costs. Since its debut in 2016, annual revenues from the Marketplace have failed to exceed the direct

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[2] Ms. Selvaggio's proposal initially included an adjustment to CWIP. However, ComEd witness Tracy explained that there were no amounts classified as CWIP related to Marketplace 2.0 in the revenue requirement. ComEd Ex. 8.0 CORR at 18-19. As a result, the proposal double-counted the CWIP component of the adjustment. *Id*. On rebuttal, AG witness Selvaggio corrected her proposed adjustment to eliminate the CWIP component. AG Ex. 3.0 at 2. ComEd argues the Commission should not adopt the AG's proposed adjustment allocating 90% of the 2020 projected plant additions for Marketplace 2.0, but if the Commission does adopt that adjustment, the AG and ComEd agree that the adjustment should not include a CWIP component.

costs funded by delivery service in every year except 2019. AG Ex. 1.0 at 18. Cumulatively, the direct costs exceed revenue by $537,306. This loss from the Marketplace is understated because the direct costs do not consider other internal costs—like salaries, overhead, and staff augmentation—that are otherwise provided for in ComEd's revenue requirement and are necessary to support the Marketplace. *Id.* at 19. Thus, the losses from the Marketplace exceed half a million dollars. AG Ex. 1.0 at 19.

The AG questions whether the changes associated with Marketplace 2.0 will generate revenues in excess of its costs. The new platform will allow customers to link customer's existing MyAccount and MyWallet settings into the Marketplace platform and expand the number of products available. *Id.* at 9. But, ComEd has presented no evidence to suggest that its changes to the Marketplace will increase sales for a platform that has historically operated at a loss. The AG maintains that no reasonable person would invest more money in a site that consistently fails to cover its costs without some sort of assurance that future sales will improve, and that ComEd's Marketplace 2.0 projected plant addition costs are not prudently incurred. The public should not be required to pay for the expansion of an unprofitable service.

The AG recognizes that in the past, the Commission has stated that the Marketplace need not return a profit because it functions as customer service. *See Commonwealth Edison Co.,* Docket 17-0196, Order at 35 (Dec. 6, 2017). However, the AG asks the Commission to revisit its prior conclusion that the Marketplace acts as a venue for customer service in light of the evidence that the Marketplace is at most a redundant customer service platform that is not needed to meet future service requirements.

The AG points out that the Marketplace is primarily an e-commerce platform where ComEd customers can purchase rebated and non-rebated efficiency products, as described by ComEd, which reported that the Marketplace is "an online marketplace where customers could find, learn about, and *purchase* energy-efficiency related products and connected home devices." ComEd Smart Grid Advanced Metering Annual Implementation Progress Report at 40 (2020) ("Smart Grid Report") (emphasis added). The AG notes that the limited customer service functions available on the Marketplace platform are already funded by the revenue requirement and available through ComEd.com. In addition to ComEd.com, the Company has multiple other channels to convey similar information. For example, ComEd is currently executing a multi-stage campaign designed to educate consumers about the benefits of smart meters and energy management programs. *See* Smart Grid Report at 55-61. The Commission should not allow ComEd to recharacterize its e-commerce site as a customer service platform when the same services already exist and are already paid for in the revenue requirement. The AG concludes that redundant customer service is not "useful in providing service to public utility customers." 220 ILCS 5/9-211. Moreover, utility service must be provided at the least cost, pursuant to Section 1-102 of the Act, and the Marketplace adds additional costs for service already provided. 220 ILCS 5/1-102.

ComEd witness Bafaloukos stated that Marketplace 2.0 will be "managed in-house at ComEd," meaning that instead of a dedicated customer service channel only for the Marketplace, customers will now "be in contact with customer service channels that also support other ComEd programs." ComEd Ex. 9.0 at 10. The AG notes that bringing the customer service channel in-house does not create any new customer service functions that do not already exist. Further, the improvements ComEd described to the "online marketplace" have little to do with customer service for ComEd's monopoly delivery services. The AG recommends removal of Marketplace 2.0 from 2020 projected plant, which reduces plant in service by $3.005 million from 2020 plant in service, increases the depreciation reserve by $0.216 million and reduces ADIT by $0.053 million. It also reduces the FY depreciation expense by $0.313 million, resulting in a reduction to the net revenue requirement of approximately $0.530 million. AG Ex. 3.1, Sch. 7.

(iii) Commission Analysis and Conclusion

The Commission discusses Marketplace 2.0 below in Section V.B.1. As the Commission approves recovery for all of ComEd's costs and ComEd's proposed allocation, its 2020 plant additions are approved.

b. 2020 Plant Additions Related to Proposed Community Solar Services

(i) ComEd Position

ComEd states the Commission should reject AG witness Selvaggio's proposal to remove approximately $6.275 million of plant in service from year-end 2019 rate base, and approximately $0.976 million from 2020 projected plant additions, in light of ComEd's notice of withdrawal of a proposal to offer certain voluntary services to support customers' subscriptions to community solar projects. *Commonwealth Edison Co*., Docket No. 19-1121, Order (Sep. 23, 2020). ComEd states the AG's position is based on mischaracterizations of the facts and the Commission's findings in Docket No. 19-1121. In addition, ComEd asserts the Commission should reject the AG's attempt to apply hindsight to remove from projected plant additions amounts associated with individual projects that were properly included in the projection when it was made.

In the interest of narrowing the issues in this proceeding, ComEd agrees to remove from rate base the costs related to plant additions that would support only the optional services described in the tariff originally proposed in Docket No. 19-1121. Specifically, approximately $819,224 spread across two projects relates exclusively to the optional services. ComEd has removed that amount from rate base and reclassified it as CWIP. In the future, if the assets are placed into service under revised tariff language, the associated costs will be moved to plant in service.

ComEd explains that the costs that remain at issue relate to assets that are currently in service and support other functions. ComEd states that the AG proposes to remove those remaining costs - those related to assets that are currently in service and those related to assets that will support functions other than those proposed in Docket No. 19-1121 - from the revenue requirements in this case. While the AG asserts it is "unfair" to include these costs, ComEd maintains the opposite is true. ComEd asserts the costs that remain in rate base were prudently incurred, are reasonable in amount, and represent assets that are currently used and useful. ComEd notes the AG has presented no evidence to the contrary.

Instead, ComEd states, the AG points to inapplicable findings made in Docket No. 19-1121. There, the Commission addressed only the optional services proposed in that docket. *Commonwealth Edison Co*., Docket No. 19-1121, Order (Sep. 23, 2020). ComEd maintains those findings are not relevant to ComEd's use of assets to provide other services. Importantly, ComEd notes the Commission did not address in that case the prudence of ComEd's decision to invest in the assets. Moreover, ComEd points out that, although the Commission did not approve the services in the form ComEd proposed in Docket No. 19-1121, that Order demonstrates that ComEd's decision to invest in the assets was prudent. The Commission found that the services "may be valuable to further the goal of the Act to increase the use of renewable energy," and would be a "significant way to improve the customer experience with community solar." *Id*. at 31. The Commission encouraged parties to "continue to work to find an effective way to deliver the service[s]." *Id*.

Finally, ComEd states that no adjustment should be made to 2020 projected plant additions, and that the AG's proposal to remove from projected plant additions amounts associated with these community solar services is based entirely — and inappropriately — on hindsight. ComEd explains there is no dispute that its 2020 projected plant additions are based on a consistent, accurate, and holistic view of the plant additions ComEd expected to make based on the best information available when the projection was prepared. ComEd maintains that individual events, such as the withdrawal of the tariff proposed in Docket No. 19-1121, do not suggest that the forecast was inaccurate, and therefore do not warrant an adjustment to the forecast. As the Commission found in ComEd's 2019 FRU proceeding, "the Act does not require ongoing updates to the value of projected plant additions throughout the [] proceeding." *Commonwealth Edison Co.*, Docket No. 19-0387, Order at 15 (Dec. 4, 2019). Instead, the reconciliation mechanism under the Act "provides a balanced means of addressing any differences between forecasted and actual costs." *Id*. ComEd notes that case addressed a similar proposal by the AG to adjust the total forecasted value of projected plant additions based on new information gained about a small number of individual projects included in the forecast, and that the Commission rejected the AG's proposal on the grounds that there was no evidence the individual projects were "improperly included" in the forecasted plant additions. *Id*. at 15-16. ComEd states the Commission should reach a similar conclusion here.

(ii) AG's Position

The AG points out that in its Order in Docket No. 19-1121, the Commission found that certain services ComEd planned to offer in connection with its Rider POGCS - Parallel Operation of Retail Customer Generating Facilities Community Supply were "not just and reasonable" and were therefore not allowed. *Commonwealth Edison Co.,* Docket 19-1121, Order at 42 (Sep. 23, 2020). In that Order, the Commission found that the Company "has not shown that there is a benefit to ratepayers or that the potential rate reduction will occur" and that "ComEd has not shown that ratepayers should potentially be required to cover the costs for the offered services." *Id*. at 13-14, 42.

Here, AG witness Selvaggio identified 2019 and 2020 community solar costs and included them with the listing of associated plant. AG Ex. 3.2, Att. F. ComEd witness Tracy suggested that Ms. Selvaggio had included more costs than she should have but testified that ComEd has voluntarily agreed, in the interest of narrowing the issues, to remove certain investments. ComEd Ex. 13.0 at 19-20. The AG states that while it is appropriate for ComEd to withdraw costs for tariff services that were rejected by the Commission, ComEd failed to explain why it removed only a portion of the costs for the identified accounts.

The AG describes the costs associated with two accounts identified by ComEd and recommends that the full cost associated with those accounts should be removed from the net revenue requirement. The AG maintains that costs for a project that the Commission rejected are clearly not just and reasonable, and it is unfair to consumers to include these costs in rates through charges for 2020 projected plant.

The AG requests that the Commission remove $610,112 in plant, $64,000 in accumulated depreciation, and $11,000 from ADIT related to the 2019 plant additions from ComEd's 2019 reconciliation year ("RY") rate base, and remove $976,000 in projected plant additions plant, $102,000 in accumulated depreciation, and $17,000 in ADIT related to the 2020 projected plant additions from the filing year ("FY") rate base.

(iii) Commission Analysis and Conclusion

Based on the evidence provided, the Commission agrees with the AG's proposed adjustment to remove all costs associated with both Project ITN 64043 and Project ITN 63238 related to community solar projects that were partially withdrawn by ComEd. ComEd has provided no detail of the "other functions" the remaining costs of the two Projects at issue purportedly support. ComEd simply states that the functions used assets that are currently in service, were prudently incurred and are used and useful. The Commission does not consider the fact that the proposals offered in Docket No. 19-1121 were withdrawn; indeed, the Commission agrees with ComEd that hindsight review of prudence is impermissible. *Ill. Power Co. v. Ill. Commerce Comm'n,* 245 Ill.App.3d 367, 371 (1993). Rather, the Commission finds ComEd has provided no evidence as to what the assets are and their functions.

c. Proposed 4.8% Reduction of Overall 2020 Plant Additions

(i) ComEd's Position

ComEd notes that the AG proposed to reduce ComEd's projected plant additions by 4.8%, but states that the AG failed to offer or point to any evidence that any individual project was improperly included in the projection. Specifically, the AG proposed to reduce the overall value of ComEd's 2020 projected plant additions by 4.8%, or approximately $65.9 million. ComEd maintains this proposal should be rejected, and Staff agrees.

ComEd states that the AG offered no evidence that any particular project, blanket or other investment was "improperly included" in ComEd's projected plant additions. *See Commonwealth Edison Co.*, Docket No. 19-0387, Order at 15-16 (Dec. 4, 2019). The AG did not identify an individual project, blanket investment program, or component of the forecast that is based on imprudence, or an unrealistic evaluation of need, nor did the AG identify any project for which the cost included in projected plant additions was unreasonably high. ComEd states the AG also did not address the testimony of ComEd witnesses regarding the preparation of the forecast, and the data relied upon in developing the projection. ComEd notes there is no allegation that any methodology

ComEd used to prepare its forecast was flawed, inappropriate, or inaccurate. Thus, ComEd concludes, the evidence that the 2020 plant additions forecast is accurate, consistent, and unbiased is uncontested.

Instead, ComEd explains, the AG's adjustment is based solely on a comparison between the forecasted value of plant additions in past years and the actual value of the plant later placed in-service in that year. On average, the projections were 4.8% higher than the actual value of plant additions, and the AG simply asks the Commission to speculate that the projection of 2020 plant additions will be "overstated" by that same amount.

However, ComEd states that a forecast is inherently imprecise, meaning no projection, no matter how valid the methodology used to construct it, can be expected to exactly match actual experience when viewed in hindsight. ComEd maintains this is precisely why the statutory formula rate process includes a reconciliation mechanism, the purpose of which is to account for any difference between the forecast and actual costs, and to make customers and the utility whole, interest is applied to the reconciliation balance. 220 ILCS 5/16-108.5(d). This structure ensures that customers pay for the actual prudent and reasonable costs of investments in assets that serve them, no more and no less. ComEd asserts that the fact ComEd's projections of plant additions differed from actual experience by an average of less than 5% does not mean that the projections are improperly calculated. And, as Staff points out, the AG's proposal "does not take into consideration that projected plant additions are an estimate and will never be projected perfectly." Staff Init. Br. at 10. The reconciliation process is intended to address this issue and will result in customers paying no more than the actual cost of assets placed in service in 2020.

ComEd notes that the AG first compared the value of ComEd's 2020 projected plant additions to the value of incremental investments ComEd was required to make under the Energy Infrastructure Modernization Act ("EIMA"), and to the "baseline" amount of pre-EIMA investment. But ComEd maintains that this discussion says nothing about the prudence of ComEd's plans to invest in assets in 2020, or the reasonableness of the cost of those investments. ComEd states the AG had an opportunity in this proceeding to investigate the projects included in ComEd's forecast of projected plant additions, but neither the AG nor the evidentiary record provides any detail that would allow the Commission to find the projection inaccurate, the investments imprudent, or the costs unreasonable.

Moreover, ComEd contends that the AG brief conflates the concept of projected plant additions with the incremental investment required by EIMA. ComEd explains that EIMA requires ComEd to make incremental investments, above a baseline, in certain specified categories of assets. In contrast, ComEd's projected plant additions include every investment the company expected to make in 2020. In 2020, ComEd states, it will replace certain existing assets, make the incremental investments required by EIMA, and invest in other new or upgraded assets. In other words, ComEd explains, the EIMA-required investments are a subset of ComEd's overall asset portfolio and represent a subset of its annual investment. Thus, ComEd asserts that the AG engages in an apples-to-oranges comparison.

Finally, ComEd notes the AG asserted that ComEd's rates will be overstated if the projection of plant additions is "overstated." However, ComEd explains that the reconciliation compares the entire actual revenue requirement against the revenue requirement previously established for that year. It does not match individual components of the revenue requirement — like projected plant additions — to the corresponding components in the prior year. Thus, a comparison of individual components of the revenue requirement says nothing about whether the overall revenue requirement will be "overstated." In fact, ComEd states, the evidence incontrovertibly shows that customers did not pay less-accurate rates as a result of variations between the projected plant additions and actual experience. If the purpose is to ensure that overall rates are not "overstated," ComEd asserts that the relevant analysis would compare the entire initial revenue requirement in each year against the corresponding actual rate year costs. ComEd notes that more meaningful analysis shows that ComEd's overall revenue requirement has been understated in seven of the eight years for which data is available. If the AG's methodology to reduce projected plant additions had been applied in the years in question, the initial rate year revenue requirements would have been even lower and would have been less predictive of actual costs – not more accurate, as AG witness Selvaggio suggests. As a result, ComEd explains, the reconciliation balances would have been higher, and ComEd customers would have paid more in interest on the reconciliation balances. Thus, ComEd concludes, AG witness Selvaggio's contention that overstated "projected net plant additions consistently increase rate base every year, thus causing delivery services rates to always be overstated" is fundamentally wrong.

(ii) Staff's Position

Staff claims that the AG's proposal to reduce projected 2020 plant additions by a 4.8% average does not take into consideration that projected plant additions are an estimate and will never be projected perfectly. To account for the imprecise nature of a projection, the formula rates include a reconciliation process which trues-up the projected plant additions to actual plant additions. *Commonwealth Edison Co.*, Docket No. 11-0271, Order at 33 (May 29, 2012).

In addition, the AG suggests that because of the sunset of formula rates after 2022, the rates in effect in 2021 which will be the result of this proceeding will not be trued up until 2023. The AG states: "overstated projected net plant additions in this proceeding cannot be ignored because there is no mechanism in effect that will compensate ratepayers for the overstated rates that would be paid in 2021." AG Ex. 1.0 at 4. However, while Section 16-108.5(h) of the PUA provides for the sunset date of formula rates on December 31, 2022, the same section of the Act provides for the winding up of formula rates:

> At such time, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, *subject to retroactive adjustment,* with interest, to reconcile rates charged with actual costs.

220 ILCS 5/16-108.5(h) (emphasis added). The AG's concern is additionally unwarranted due to the fact that in the year 2022, the formula rates will reconcile the 2021 revenue requirement, and the resulting rates will be filed with the Commission in December of

2022 to be in place at the time the formula rates sunset. Per the Act, those rates will remain in effect until new rates can be established pursuant to Article IX. Staff Ex. 5.0 at 7-8. Therefore, Staff recommends that the Commission reject the AG's proposal.

(iii) AG's Position

The AG presented an analysis of ComEd's historical projected plant that showed that on average ComEd had over-estimated projected plant by 4.8%, with the 2017 and 2018 over-estimates equaling 10.4% and 15.6% respectively. In this docket, ComEd projected $1,650,954,000 in 2020 plant additions. ComEd Ex. 13.01, Sch. FR B-1, lines 29, 31; AG Ex. 3.1, Sch. 1. The AG emphasizes that this amount – $1.65 billion – is more than half of the total $2.6 billion that ComEd is statutorily obligated to spend to modernize its system over ten years. 220 ILCS 5/16-108.5(b)(1).

ComEd reports that it already made $2,576.7 million in EIMA Reliability-Related Investments for the period 2012 through 2018 and spent $20.1 million in 2019. ComEd Ex. 3.01. While only $3.7 million of EIMA investments remain to satisfy its statutory spending requirement, ComEd projects $1,651 million in 2020 plant additions. *Id.*; ComEd Ex. 5.0 at fn. 52. The AG recognizes that EIMA spending is incremental to ComEd's historical average "capital spend." The AG points out that the combination of baseline and remaining formula rate investment equal only $922.7 million. ComEd's 2020 projected plant additions exceed that amount by $728.3 million or 78.9%. The baseline spend is $918.7 million, and the remaining EIMA spend is $3.7 million. AG Ex. 3.0 at 7.

The AG recommends that the Commission recognize both: (1) ComEd's consistent practice of over-estimating projected plant since the inception of formula rates; and (2) the fact that ComEd has essentially already met its statutory spending commitment so that the high level of spending anticipated for 2020 is not justified. These factors should lead the Commission to adopt the adjustment to reduce the 2020 projected plant additions by 4.8% as recommended by AG witness Selvaggio. The AG points out that this is a modest reduction that does not capture the full extent of ComEd's sizable over-estimates over the last five years. This adjustment reduces rate base by $75.877 million, reduces depreciation expense by $2.458 million (using AG witness Garrett's depreciation rates), and reduces the net revenue requirement by about $8.444 million. AG Ex. 3.0 at 8; AG Ex. 3.1 at Sch. 1.

(iv) Commission Analysis and Conclusion

The AG requests the Commission reduce ComEd's 2020 projected plant additions by 4.8% because it claims ComEd's 2019 projected plant additions were "overstated" by 4.8% compared to its actual plant additions in 2019. The Commission agrees with ComEd and Staff that the AG's adjustment should be rejected. First, as both Staff and ComEd point out, ComEd will never be able to perfectly estimate its projected plant. Indeed, the word "projected" means "an estimate." It is for this reason that the FRU process includes a true-up mechanism to account for the difference between projected plant and actual plant expenditures. Second, as ComEd notes, the AG did not identify any projected plant in 2019 that it determined was unecessary or improperly included. And now, the AG does not identify any specific plant in this year's FRU that is improper. This arbitrary adjustment of 4.8% is unreasonable.

The Commission also agrees with Staff that the AG's argument about the sunset of formula rates is irrelevant because Section 16-108.5(h) requires a retroactive reconciliation with interest. Therefore, the Commission declines to adopt the AG's adjustment.

2. Updated Depreciation Rates

a. ComEd's Position

ComEd explains that depreciation represents the loss in value that occurs in connection with the consumption of utility plant in the course of service, via wear and tear, deterioration, action of the elements, inadequacy, obsolescence, changes in demand, or the requirements of public authorities. ComEd states that depreciation impacts both rate base and expense; each year, the amount of total depreciation that occurs in the year – the assets "used up" that year – is accounted-for as an expense, while the value of capital assets in rate base decreases by the amount of depreciation that occurred in the year.

In January 2019, in accordance with prior Commission Orders and Section 5-104 of the Act, ComEd submitted to the Commission an updated depreciation study. ComEd states that the study was properly performed by qualified experts, and independently reviewed by public accountants. Pursuant to Section 5-104, the updated depreciation rates became effective upon filing. 220 ILCS 5/5-104. ComEd states it applied those depreciation rates in its 2019 FRU proceeding and again in this proceeding.

ComEd notes that the AG and IIEC/CUB propose to modify the depreciation rates applied to assets in certain accounts. Those proposals are addressed in Section V.B.3., below. However, ComEd states the Commission should be aware that any change in depreciation rates will impact rate base as well as expense, as a greater depreciation rate will increase operating expenses in the short-run, but will reduce rate base at a faster rate, lowering future returns of and on rate base. Conversely, ComEd explains, a lower depreciation rate will decrease operating expenses in the short-run but result in maintenance of higher overall levels of rate base, increasing future returns of and on rate base.

b. AG's Position

AG witness Garrett reviewed ComEd's new depreciation rates and found that the Company's new rates resulted in higher than appropriate depreciation expense as a result of adopting Iowa curves that reflect shorter lives than is appropriate. The AG requests that the Commission adopt the depreciation rates recommended by Mr. Garrett as discussed below in Section V.B.3.

c. IIEC/CUB's Position

This is discussed in Section V.B.3.

d. Commission Analysis and Conclusion

The Commission addresses this issue in Section V.B.3.

V. OPERATING EXPENSES

A. Uncontested Issues

1. Distribution O&M Expense

ComEd states its distribution Operations & Maintenance ("O&M") expense in 2019 was $476,395,000, and a total of $473,095,000 was included in ComEd's surrebuttal jurisdictional revenue requirements. ComEd Ex. 13.01, Sch. FR C-1, lines 1, 3. ComEd explains distribution O&M expenses are incurred for the normal day-to-day activities needed to operate, monitor, and switch the system to maintain service and restore it when equipment is out of service for maintenance or due to failure.

The AG and Staff proposed an adjustment for the Deferred Prosecution Agreement. ComEd proposed voluntary adjustments in its surrebuttal testiony that further reduced ComEd's distribution O&M expenses by $38,000. The Commission approves the adjusted level of distribution expenses.

2. Customer-Related O&M Expense

ComEd states that its surrebuttal customer-related O&M expense in 2019, after adjustments, totaled $192,757,000. ComEd Ex. 13.01, Sch. FR A-1, lines 2-3. ComEd explains that customer-related O&M expense includes the costs of maintaining and servicing customer accounts, such as meter reading, billing questions and disputes, providing information on service options, and revenue management functions that include activities related to collection and uncollectible accounts.

The AG and Staff proposed an adjustment for legal fees and the Deferred Prosecution Agreement. ComEd proposed voluntary adjustments in surrebuttal testimony that further reduced ComEd's customer-related O&M expenses by $403,000. The Commission finds the adjusted 2019 expenses to be prudently incurred and reasonable in amount, and they are approved.

3. Administrative and General Expense

ComEd states that its Administrative and General ("A&G") expense includes the cost of a wide variety of corporate support and overhead costs that benefit more than one business function, such as Human Resources, Finance, Legal, Supply Management, IT, and Corporate Governance, as well as the costs of employee pensions and benefits, rents, injuries and damages expense, and regulatory expense. ComEd explains that it employs cost control processes to manage its A&G expense and ensure the costs are prudently incurred and reasonable in amount.

Aside from the five agreed adjustments addressed below, no party proposed an adjustment to ComEd's surrebuttal A&G expenses, which total $335,120,000. ComEd Ex. 13.01, Sch. FR A-1, line 4. The AG and Staff proposed adjustments in testimony which ComEd voluntarily increased in surrebuttal testimony. The Commission adopts each of the uncontested adjustments described below and finds the resulting level of A&G expense was prudently and reasonable in amount. It is therefore approved.

a. Adjustment to Outside Agency Collection Fees

In response to discovery, ComEd adjusted operating expenses for outside agency collection fees, reducing jurisdictional operating expense in the filing year and the rate year by $17,000. This adjustment is incorporated into the approved level of A&G expense.

b. Adjustment to Lobbying Expense

In response to discovery, ComEd adjusted A&G expenses to remove approximately $263,000 in expenses related to lobbying. This adjustment reduced operating expense in the filing year and the rate year by $224,000. This adjustment is incorporated into the approved level of A&G expense.

c. Adjustment to Reputation Management Expense

In response to discovery, ComEd removed an inadvertent duplicate recording of reputation management expenses from the ledger. This adjustment reduced operating expense in the filing year and the rate year by $1,505,000. This adjustment is incorporated into the approved level of A&G expense.

d. Adjustment to Corporate Helicopter Expense

ComEd states it increased the voluntarily excluded amount associated with corporate helicopter usage, resulting in a jurisdictional reduction to operating expense in the filing year and rate year of $7,000. This adjustment is incorporated into the approved level of A&G expense.

e. Adjustment to Outside Professional Services

ComEd states it adjusted outside professional services expense, resulting in a jurisdictional reduction to operating expense in the filing year and the rate year of $14,000. This adjustment is incorporated into the approved level of A&G expense.

4. Return on Pension Asset

ComEd's 2019 expense includes the recovery of the investment cost of the jurisdictional portion of the pension asset net of ADIT, calculated using a debt-only rate of return. This amount totaled $24,475,000. No party proposed an adjustment to the return on pension asset in this proceeding. The Commission approves this amount.

5. Sales and Marketing Expense

ComEd did not include sales and marketing expense in its revenue requirement.

6. Taxes Other than Income

ComEd's revenue requirements include $146,734,000 in expense for taxes other than income taxes, including the Illinois Electricity Distribution Tax ("IEDT"), real estate taxes, payroll taxes, and several other taxes. ComEd Ex. 13.01, Sch. FR C-1, line 10; App. 7 at 2, lines 41-62. ComEd excluded from its revenue requirements payroll taxes related to previously disallowed incentive compensation. ComEd recorded a true-up in 2019 for the 2018 annual tax return related to its 2018 IEDT accrual, and a true-up adjustment to the estimated IEDT refund for 2018. No party proposed an adjustment to

ComEd's expense for taxes other than income taxes. This expense was prudently incurred, reasonable in amount, and is approved.

7. Income Tax Expense

ComEd's 2019 Reconciliation Revenue Requirement, as adjusted, includes $89,795,000 in income taxes. Appendix B, Sch. 1RY, lines 19-21. ComEd's Initial Rate Year Revenue Requirement includes $105,625,000 in income taxes, after accounting for the impact of projected 2019 plant additions. Appendix A, Sch. 1FY, lines 19-21. ComEd calculated its income taxes based on the expenses and miscellaneous revenues assigned or allocated to the delivery services function. ComEd also analyzed differences in book and tax treatment of 2019 revenues and expenses and assigned or allocated those differences to the delivery services function. No party proposed a specific adjustment to ComEd's income tax expense. The income tax expense, as adjusted, is approved.

8. Regulatory Asset Amortization

ComEd's revenue requirements include $48,674,000 of regulatory asset amortization expense. ComEd Ex. 13.01, Sch. FR C-1, line 18. This amount includes the effects of the Commission's Order in Docket No. 10-0467, which revised the amount of amortization for several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. No party proposed an adjustment to ComEd's regulatory asset amortization expense. This expense was prudently incurred, reasonable in amount, and is approved.

9. EIMA Credits

ComEd states that approximately $8,740,000 of the $10 million program credits in 2019 was recorded as customer bill credits and was not included in operating expenses. Additionally, $817,000 of customer assistance expense recorded in FERC Account 908 and $535,000 of advertising expenses recorded in FERC Account 930.1 were also removed from operating expenses. *See* ComEd Ex. 13.02, WP 7 at 13.

10. Charges for Services Provided by BSC

ComEd states that BSC is the company within the Exelon family of affiliated companies that provides information technology, supply, finance, legal, and human relations to ComEd and Exelon's other business units. During 2019, ComEd incurred $411,900,000 in costs for services provided to ComEd by BSC. Of that total, approximately $184,400,000 of jurisdictional BSC costs were included in operating expense in ComEd's initial filing. In surrebuttal testimony ComEd voluntarily proposed adjustments to BSC costs included in the revenue requirements that included costs for the corporate helicopter and the Deferred Prosecution Agreement. These adjusted expenses were prudently incurred and reasonable in amount, and they are therefore approved.

11. BSC Allocator

ComEd's revenue requirements include BSC costs that are allocated to ComEd in accordance with the Commission's Order in Docket No. 13-0318. ComEd Ex. 1.10. No party proposed an adjustment to the BSC allocation. The allocation factor is reasonable, and it is approved.

12. Rate Case Expense

ComEd states its revenue requirement includes rate case expenses totaling $809,987, comprised of: (i) rate case expenses of $136,902 incurred in 2019 for Docket No. 18-0808; and (ii) rate case expenses of $673,085 incurred in 2019 for Docket No. 19-0387. ComEd supported its rate case expense with the Affidavit of Richard G. Bernet, Assistant General Counsel, and other documentation. ComEd Ex. 1.12. ComEd submits that this evidence supports a Commission finding that the expenses were just and reasonable, in accordance with Section 9-229 of the Act. 220 ILCS 5/9-229. ComEd explains that the documentation provides the evidentiary support for each Commission proceeding for which ComEd seeks recovery. ComEd further explains that the affidavit describes the services provided in connection with the expense for which recovery is sought, identifies the individuals working on the matters and their qualifications, and discusses market rates charged by regulatory lawyers in Chicago to support the reasonableness of the fees charged. *Id*. No party contests these expenses. Therefore, the Commission approves the rate case expense described above.

13. Incentive Compensation Program Expense

ComEd explains that, in Docket No. 11-0271, the Commission adopted a "proposal to require ComEd to include, in its initial filing, the information that is necessary to allow the Commission to determine whether ComEd has achieved the metric regarding incentive compensation … as it requires ComEd to substantiate entitlement to recovery for the incentive compensation that it awarded which meets the metrics cited above in Section 16-108.5" of the PUA. *Commonwealth Edison Co.*, Docket No. 11-0721, Order at 160 (May 29, 2012). The Commission decided that "ComEd should be required to file, with its initial performance-based rate filing, evidence establishing that its employees have achieved the statutory metrics," including evidence as to "what its employees did to achieve the performance metrics in Section 16-108.5." *Id*. at 92.

ComEd states that its testimony regarding the incentive compensation plans substantiates its entitlement to recover its incentive compensation expenses, and describes the metrics set forth in ComEd's incentive compensation plans, how ComEd performed under the metrics, and what its employees did to achieve the metrics.

No witness contested that the 2019 incentive compensation costs, amounting to $68,900,000 functionalized to delivery services, resulted in market-based compensation levels, were prudently incurred and reasonable in amount. Therefore, the Commission approves the incentive compensation program expenses.

14. Gross Revenue Conversion Factor

ComEd's Gross Revenue Conversion Factor ("GRCF") is 1.3987. ComEd Ex. 13.01, Sch. FR C-4, line 13. The GRCF is uncontested, and the Commission approves ComEd's GRCF.

15. Other Voluntary Adjustments and Exclusions

a. Related to the Deferred Prosecution Agreement

(i) ComEd Position

ComEd states that there are no contested issues related to the Deferred Prosecution Agreement ("DPA"). ComEd states that the DPA was executed in July 2020, after the submission of direct testimony by all parties in this proceeding, and the DPA acknowledges that ComEd hired or retained various associates of Public Official A. While ComEd paid some of those associates in 2019, ComEd states that none of their costs, and no additional costs of investigating the facts recited in the DPA, are included in ComEd's revenue requirements.[3] ComEd states that many of those costs were never included, and ComEd has voluntarily agreed to exclude others without regard to their reasonableness, prudence, or legal recoverability. As a result, ComEd states that no contested issues remain. ComEd notes that Staff agrees and acknowledges that no sums remain in dispute.

ComEd explains that the costs related to the DPA fall into three categories. First, the costs of many employees and contractors described in the DPA were never included in ComEd's revenue requirements. ComEd states that many such costs — including the costs of all who performed little or no work and the costs of lobbyists and employees performing political activity — were recorded in "below the line" accounts fully funded by shareholders. ComEd states that other costs, including certain otherwise recoverable executive compensation, are of a type traditionally excluded voluntarily from the beginning of the case without regard to the DPA.

Second, ComEd states that many employees and contractors who were associates of Public Official A engaged in recoverable work (*e.g.*, customer service representatives, field workers, legal counsel) supporting ComEd's provision of delivery services just like every other employee or contractor in the same or similar role. ComEd notes that the DPA does not say otherwise, and the record does not show otherwise. ComEd states that the prudent and reasonable costs of that work were included in ComEd's revenue requirements at the outset of the case. However, to limit the contested issues in this case, and without waiving its rights in other cases or regarding other years, ComEd voluntarily removed the costs of those employees and contractors, regardless of their legal recoverability. In addition to removing the costs of individually identified employees and contractors, ComEd removed $1,782,465 of jurisdictional costs of salaries and wages, grossed up for benefits, contract payments, and anything else of value" paid to "individuals, employees, consultants, and vendors who were or may have been associates of Public Official A, and the costs of all interns residing in the ward associated with Public Official A, whether or not there was any indication the intern was actually an associate of Public Official A.

Third, ComEd has removed from its proposed revenue requirements any additional costs it incurred investigating matters relating to the DPA. In general, ComEd excluded

[3] While no party claimed otherwise, ComEd also notes that, as expressly provided by the DPA, no portion of the payments the DPA requires ComEd to make are included in rates.

those costs before filing this case. But, when, during discovery and upon further investigation, ComEd identified additional costs (totaling approximately $75,000) and removed those costs as well.

ComEd notes that the AG argues that an issue remains about ComEd's voluntary exclusion of costs of certain employees who were associates of Public Official A but who were not mentioned in the DPA or implicated in any wrongdoing themselves. However, ComEd explains that the AG's argument, and the adjustment it claims should have been made, are based on uncorrected data that was subsequently corrected well before the hearing.

Specifically, ComEd states that the AG claims ComEd did not completely exclude the costs of employees and contractors who were associates of Public Official A, but who were engaged in recoverable work supporting ComEd's provision of delivery services (*e.g.*, customer service representatives, field workers, analysts) just like non-associates in the same or similar position. ComEd states this claim rests on the fact that ComEd's final voluntary exclusion ($1.78 million) is less than the AG calculated in its rebuttal testimony ($2.21 million) based on an uncorrected version of ComEd's response to Data Request DLT 12.02. The corrected version of that response, DLT 12.02 CORR, is itself evidence (ComEd Ex. 13.09 at 1-4) as is testimony confirming that ComEd updated that response to reflect "any additional investigation or review." ComEd Ex. 13.0 at 28. ComEd witness Tracy also confirmed that data from the "corrected response is included in ComEd Ex. 13.09" (*id*. at 28) and that ComEd's "revenue requirements [presented in surrebuttal testimony] reflect exclusions based on that data." *Id*. Ms. Tracy also confirmed that Staff raises no questions about ComEd's exclusion, and there is no contrary evidence. ComEd states the AG's reliance on superseded data to claim otherwise is inexplicable.

ComEd notes that the AG argued an involuntary disallowance is warranted, despite the fact that there is nothing in the revenue requirements to disallow. ComEd states that the hypothetical question of whether these costs would have been disallowable if they had been in the revenue requirement is not before the Commission and need not and should not be addressed here. *Belleville Toyota v. Toyota Motor Sales, U.S.A*., 199 Ill. 2d 325, 335 (2002) ("a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests").

Nevertheless, ComEd maintains the evidence shows that ComEd "excluded from its original filing the costs of all employees and contractors who lobbied on ComEd's behalf, were registered as a lobbyist for ComEd, or performed lobbying services for ComEd," as well as costs of "all employees and contractors who performed non-lobbying political activity." ComEd Ex. 13.0, 25-26. Those costs were recorded in below the line accounts. *Id*. ComEd states the AG cannot accurately characterize as "political" or "lobbying" expense amounts paid to employees or contractors who undisputedly worked to serve customers simply because the particular individual performing that work was selected after a recommendation from a politician. ComEd clarifies it is not defending conduct outlined in the DPA, but those employees and contractors — a distinct group from the contractors paid for little or no work — were paid to do a job and they did it. "If a person is hired, for example, as a Customer Service Representative and works that job, they are being paid to serve customers." *Id.* at 26. ComEd concludes there is no basis in this record for the Commission to make the contrary finding the AG requests.

In sum, no genuine dispute remains concerning costs of activities described in the DPA. While Staff and the AG each recommended in rebuttal testimony adjustments for 2019 costs of contractors and employees described in the DPA, the exclusions discussed above encompass and arguably exceed those recommended adjustments.

(ii) AG's Position

The AG states that during the course of this proceeding, on July 17, 2020, the US Attorney for the Northern District of Illinois announced that he had entered into a DPA with ComEd in which ComEd admitted to entering into contracts and hiring people to influence Public Official A in order to obtain favorable legislative treatment of its frequent proposed changes in Illinois law. Staff Ex. 7.0. As a result of that revelation, the AG and Staff recommended that the expenses associated with contracts or employees who were retained as part of the scheme described in the DPA be excluded from the revenue requirement. AG Ex. 3. 0 at 14-15. In her rebuttal testimony, AG witness Selvaggio reduced 2019 operating expenses by $2,211,149, based on the Company's response to Staff Data Request DLT 12.02. Based on a correction to that Data Request provided after rebuttal testimony was filed, ComEd recalculated Ms. Selvaggio's adjustment. The AG does not object to the $2,113,000 adjustment to remove DPA related costs identified by ComEd. ComEd Exhibit 13.07

In response to ComEd's argument that irrespective of the motive for hiring the individuals identified in the DPA, they performed work for ComEd's delivery services and so the associated costs should be included in ComEd's revenue requirements, ComEd Ex. 13.0 at 24-27, the AG refers to the DPA that ComEd "shall not… make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by ComEd set forth above or the facts described in the attached Statement of Facts." Staff Ex. 7.0 at 13, para. 20. The DPA's Statement of Facts describes the misconduct as follows:

> From in or around 2011 through in or around 2019, in an effort to influence and reward Public Official A's efforts, as Speaker of the Illinois House of Representatives, to assist ComEd with respect to legislation concerning ComEd and its business, ComEd arranged for various associates of Public Official A, including Public Official A's political allies and individuals who performed political work for Public Official A, *to obtain jobs, vendor subcontracts, and monetary payments associated with those jobs and subcontracts from ComEd, even in instances where certain political allies and workers performed little or no work* that they were purportedly hired to perform for ComEd.

Staff Exhibit 7.0 at 22 (emphasis added). In light of the facts and terms of the DPA, the AG maintains that the Commission can properly exclude these costs as unreasonable irrespective of ComEd's agreement to the disallowance.

(iii) Commission Analysis and Conclusion

This issue does not appear to be contested. In fact, the Commission finds that the parties agree that, pursuant to the DPA, the costs of all ComEd employees and contractors who were associates of Public Official A were removed from the revenue requirement and ComEd does not seek recovery for those employees or contractors. This exclusion includes "salaries and wages, grossed up for benefits, contract payments, and anything else of value" paid to "individuals, employees, consultants, and vendors who were or may have been associates of Public Official A," and the costs of all interns residing in the ward associated with Public Official A, whether or not there was any indication the intern was actually an associate of Public Official A. The original AG adjustment appears to have been made based on discovery from ComEd that was subsequently updated. It also appears that ComEd and the AG dispute whether any associates of Public Official A could have engaged in legal, recoverable work for ComEd. The Commission notes that since ComEd removes all of the costs of these employees, regardless of their job description or duties, the question of whether their costs could have been recoverable is irrelevant.

B. Contested Issues

1. Marketplace

a. ComEd's Position

ComEd states that the Marketplace is a web-based self-service information and e-commerce platform that provides customers with information and access to selected products and services to help them better understand, manage, and control their energy use. The Marketplace includes extensive information concerning ComEd programs, rates, and initiatives, such as Central A/C Cycling, Peak Time Savings, and Hourly Pricing, and explaining how customers can enroll in these programs and use technology and energy-related products to reap benefits from their enrollment. ComEd explains that the Marketplace provides access to customer service channels via phone, email and live-chat, and provides users a platform to purchase curated products that can help manage and control energy use, including products that ComEd customers can acquire with energy efficiency rebates automatically applied.

ComEd notes that the Commission has recognized in every year since the Marketplace commenced operation that it provides delivery services, and that the costs associated with the delivery services functionality are recoverable in ComEd's delivery services formula rates. In the first FRU proceeding in which the Marketplace was reviewed, the Commission expressly recognized the "connection between the Marketplace and the provision of delivery services," and found that the Marketplace functioned as a component of ComEd's customer services and supported the provision of public utility service. *Commonwealth Edison Co.*, Docket No. 17-0196, Order at 34 (Dec. 6, 2017). The Commission also concluded that the Marketplace offered "real and quantifiable" benefits to customers, because it is "an easy, user-friendly platform for customers to engage in learning about and purchasing energy efficient products." *Id*.

ComEd states those findings and conclusions were confirmed in subsequent years. In ComEd's 2018 delivery services FRU proceeding, the Commission found that "customers use the Marketplace and benefit from it," and explained that "the Commission is not inclined to dissuade ComEd from developing and providing its customers with services that customers actually use and perhaps may prefer." *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 40 (Dec. 4, 2018). The Commission rejected arguments from the AG that costs associated with the Marketplace should be disallowed because the platform does not independently generate a profit, finding instead that "the profitability of individual utility programs is not a factor in the Commission's evaluation of prudence and reasonableness." *Id*. And in ComEd's 2019 delivery services FRU proceeding, the Commission approved a stipulated recommendation that permitted recovery of a portion of Marketplace costs in delivery services rates. *Commonwealth Edison Co.*, Docket No. 19-0387, Order at 23 (Dec. 4, 2019).

ComEd states that, during 2019, ComEd began developing a redesigned Marketplace platform – known as Marketplace 2.0 – that will be managed in-house at ComEd and enable ComEd to provide additional value to customers. ComEd explains that Marketplace 2.0 will provide many of the same services and information available via the original Marketplace, but will include improved functionality such as centralized customer service, one-click enrollment in ComEd programs such as Demand Response and bill assistance, additional personalization, streamlined payments, and an expanded product catalog. Many of these benefits arise from the integration of ComEd's existing MyAccount and MyWallet tools into the Marketplace. ComEd explains that the one-click enrollment feature of Marketplace 2.0 allows ComEd customers to login using the same MyAccount tool applicable to their utility accounts and enroll in ComEd programs within the Marketplace platform as part of a single experience. The improved personalization features of Marketplace 2.0 allow ComEd customers to use their MyAccount to validate their eligibility for energy efficiency rebates, instead of entering their account information during the checkout process. The streamlined payment functionality will rely on data already stored in ComEd customers' MyWallet tool to easily and securely pay for products purchased on the Marketplace. ComEd states that, because Marketplace 2.0 will be managed in-house at ComEd, customers who use any of the customer service tools available on the Marketplace will be in contact with customer service channels that also support ComEd programs, and this cross-program customer support will provide a smoother experience for customers. Finally, ComEd states, Marketplace 2.0 will enable multiple fulfillment providers to offer products for sale on the Marketplace, expanding the scope of choice available to customers, and encouraging competition among providers.

(i) The AG's Effort to Disallow Marketplace Costs Should be Rejected.

Despite the clarity with which the Commission has rejected the AG's attempts to disallow or restrict the scope of the Marketplace in past cases, and despite the AG's failure to present new facts that would support a deviation from that past practice, ComEd notes that the AG proposed to disallow all Marketplace costs. ComEd states this proposal is based on three premises, none of which should be accepted by the Commission.

First, ComEd notes that the AG asserts that the "primary purpose of the Marketplace is to facilitate the sale of goods." AG Ex. 3.0 at 19. ComEd states that the Commission has rejected this argument in past cases and should do so again here. Staff agrees, noting that the Commission has "determined on several occasions that the nature of the Marketplace is included in the provision of delivery services." Staff Init. Br. at 19, *citing Commonwealth Edison Co.*, Docket No. 17-0196, Order at 34-35 (Dec. 6, 2017), and *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 40 (Dec. 4, 2018). ComEd asserts that the AG has offered no facts or law that diverge from those the Commission has relied upon in past cases. And, in contrast, ComEd has offered significant evidence demonstrating that customers use the Marketplace and do so particularly to gain information. ComEd maintains this evidence supports the conclusion that the Marketplace is a component of ComEd's customer service. Specifically, ComEd explains that the primary purpose of the Marketplace is to provide customer services. The Marketplace includes information about ComEd programs, rates, and initiatives that help customers manage their energy use, as well as billing assistance and home energy assessments. ComEd states this information, paired with the products available on the Marketplace, can help customers better realize the benefits of the ComEd programs, rates, and initiatives. Thus, ComEd concludes, while the Marketplace does allow customers to purchase energy-related products, that is not its primary purpose.

Second, the AG claims that the Marketplace duplicates customer service functions already available at ComEd.com. ComEd states the Commission has already rejected this argument – that Marketplace costs should be disallowed because it duplicates information available on ComEd.com – in prior proceedings. In ComEd's 2017 delivery services FRU proceeding, the Commission found, "[t]he fact that the energy-related information or access to products is available through other resources does not *ipso facto* negate these benefits [of the Marketplace], nor make the costs of providing such service imprudent or unreasonable." *Commonwealth Edison Co.*, Docket No. 17-0196, Order at 34-35 (Dec. 6, 2017). And, ComEd notes that the Commission found in ComEd's 2018 delivery services FRU proceeding, that it is poor policy to disallow the cost of a customer service initiative that "customers actually use and perhaps may prefer." *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 40 (Dec. 4, 2018); *see also* ComEd Ex. 14.0 at 5-6 (noting that the total visitors, total unique visitors, and total orders all increased in 2019). ComEd explains that customers access information in different ways at different times, and a policy that confines a utility to a single method of providing information to customers will inhibit the utility's communications with customers, not enhance them. ComEd states that the fact that information could be tracked down by customers through channels other than the Marketplace does not mean that customers will locate and access that information when they need it or cast doubt on the benefits of allowing customers better or more efficient access to that information. Because the Marketplace packages together information about ComEd programs and energy-related products, ComEd asserts it provides information to customers at the moment they are trying to choose products and services that will help them manage their energy use. In addition, ComEd notes that some customers may access and use information available on the Marketplace without intending to search for that information; for example, customers may learn about ComEd's rates or programs, even though they initially set out to locate a product.

Third, ComEd notes that the AG argues 2020 plant additions for Marketplace 2.0 should be disallowed in their entirety because "the venture still has not covered its cumulative costs." AG Ex. 3.0 at 19. ComEd notes the Commission has also rejected, in past cases, arguments that the Marketplace should be disallowed because it "does not operate at a financial gain." *Commonwealth Edison Co.*, Docket No. 18-0808, Order at

40 (Dec. 4, 2018). The Commission has determined that "the profitability of individual utility programs is not a factor in the Commission's evaluation of prudence and reasonableness." *Id*. ComEd states the AG has offered no facts or argument that would justify deviating from that conclusion in this case. Moreover, ComEd notes that the AG has identified no other component of utility service that is subject to a profitability standard and has offered no rationale or analysis supporting its continued efforts to apply such a standard to the Marketplace alone. Indeed, ComEd maintains it would be unreasonable to expect any customer service initiative – or any component of utility service – to independently "cover[] its cumulative costs." If that was the standard for recovery, ComEd explains, there would be no costs to recover. The Commission should once again reject this argument.

(ii) The AG's Effort to Reallocate Marketplace Costs Away from Delivery Services Should be Rejected.

ComEd notes that, as an alternative to the AG's "primary" proposal that all Marketplace costs should be disallowed, the AG suggests that the costs should be reallocated so that 90% of the cost of the Marketplace would be recovered in ComEd's Energy Efficiency revenue requirement, and only the remaining 10% would be recovered in ComEd's delivery services revenue requirement. ComEd states that, although the AG is actively participatingd in ComEd's pending energy efficiency revenue requirement update proceeding, Docket No. 20-0475, and had the opportunity to make a parallel recommendation in that case, it failed to do so. As Staff witness Tolsdorf explained, "the AG's proposal to remove a portion of the Marketplace costs from delivery services without a corresponding adjustment to include those costs in the energy efficiency docket results in an *ipso facto* disallowance of costs that no party has challenged as unreasonable." Staff Ex. 5.0 at 12. For this reason alone, ComEd asserts the Commission should reject the AG's alternative recommendation. However, ComEd maintains that the AG's alternative recommendation is also contrary to the record in this proceeding and can be rejected on that basis as well.

(1) 2019 Vendor Expense

ComEd explains that its delivery services revenue requirement incorporates an allocation of Marketplace costs, with the allocation factor calculated in accordance with the purpose that the costs served. The portion of Marketplace costs not allocated to delivery services are recovered in ComEd's energy efficiency revenue requirement. ComEd states it allocated the cost of one of the two vendors that provided Marketplace-related services in 2019 – Simple Energy – according to the ratio of products sold with a rebate funded via ComEd's energy efficiency program to the total number of products sold. This allocation methodology resulted in 90% of the cost associated with the vendor being allocated to the energy efficiency revenue requirement. ComEd notes the AG took no issue with the allocation of cost for this vendor.

ComEd states that, for Halcyon Plus, LLC ("Halcyon"), the other vendor that provided Marketplace-related services in 2019, ComEd allocated the cost based on the purpose of the activity that Halcyon performed. In 2019, the services Halcyon provided included daily oversight of the Marketplace platform, customer support escalation, management of other vendors, and coordination with ComEd's Demand Response, Smart Grid, Marketing, Energy Efficiency, and other teams regarding Marketplace functionality and cross-team marketing efforts. ComEd explains that the costs associated with activities that primarily served the Energy Efficiency Program were allocated to the energy efficiency revenue requirement, while costs of all other activities were allocated to the delivery services revenue requirement. ComEd states that, on invoices sent to ComEd during 2019, Halcyon allocated its costs in accordance with historical experience indicating that approximately 93% of Halcyon's time is spent on activities related to delivery services. Over the course of the year, Halcyon personnel actually spent approximately 94% of their time on activities related to delivery services. In light of the minute difference between the anticipated and reported allocation of Halcyon's time, ComEd states it did not adjust the allocation of Halcyon's costs. As a result, ComEd's delivery services revenue requirement includes approximately 93% of the costs of Halcyon's services in 2019.

ComEd notes that the AG argues the costs associated with Halcyon's services should be allocated 10% to delivery services and 90% to energy efficiency, based on the ratio of products sold with, and without, an energy efficiency rebate. However, ComEd maintains that the AG's proposed allocation does not correlate to the services that Halcyon provided during the year. Halcyon personnel spent 94% of their time providing services that support the Marketplace platform, which is a component of ComEd's broader customer service efforts and is not an energy efficiency function. For example, ComEd notes that Halcyon personnel reviewed Marketplace metrics related to customer service, such as call and chat metrics, as well as customer traffic and email engagement, and conversion rates. ComEd explains that these activities support the general functionality of the Marketplace because they provide information about how customers use the platform, and in particular how customers use the customer service functions built-in to the Marketplace. In another example, ComEd points out that Halcyon provided support in developing educational materials used during a training day for ComEd's Call Center. This activity supported the customer service functionality of the Marketplace because it helped ensure that customers obtain consistent information about the Marketplace. From these examples, ComEd maintains it is clear that Halcyon's activities do not fluctuate according to the ratio of products sold with or without a rebate. Therefore, ComEd concludes that Halcyon's costs should not be allocated based on the ratio of rebated products to total products sold.

(2) 2019 Marketplace 2.0 Expense

ComEd states that, in 2019, ComEd incurred approximately $250,000 in expenses associated with the development of the Marketplace 2.0 platform. ComEd explains these costs were allocated entirely to ComEd's delivery services revenue requirement, because they support the development of the Marketplace 2.0 platform. ComEd notes that AG witness Selvaggio asserted that these expenses "relate to the future sale of rebated products," and recommended that 90% of these costs should be allocated to ComEd's energy efficiency revenue requirement, and only the remaining 10% should be recovered in ComEd's delivery services revenue requirement. AG Ex. 1.0 at 12, 13. ComEd contends that recommendation should be rejected.

ComEd explains that the 2019 Marketplace 2.0 expenses support the existence of the Marketplace as a customer service platform, and include: (i) user experience design, which enables the website to display information, images, graphics, and links in an intuitive manner; (ii) systems integration services that enable ComEd's existing MyAccount and MyWallet tools to be used within the Marketplace; (iii) related software licenses; and (iv) internal labor associated with project management, IT, and testing. Contrary to Ms. Selvaggio's assertion that these costs are "related to the future sale of rebated products," AG Ex. 1.0 at 12, ComEd asserts these costs would be incurred regardless of whether any rebated products are ever sold on the Marketplace 2.0 platform. ComEd notes that the Commission has found in past cases that the Marketplace is a customer service platform within the scope of delivery services. Thus, ComEd concludes that the costs of developing and maintaining the platform are properly included in the delivery services revenue requirement.

b. Staff's Position

(i) 2019 Vendor Expense

Staff supports ComEd's allocation of the 2019 Marketplace costs associated with two outside vendors based upon the purpose of the costs. According to ComEd, Simple Energy "…provides software services, product catalog curation, merchant relationship management, customer service support including via live chat, email and phone support channels, and marketing support." ComEd Ex. 9.0 at 6. The methodology used to allocate the Simple Energy costs is based upon the number of rebated products sold through the Marketplace versus the total number of products sold. That results in an allocation factor of 90% to energy efficiency and 10% to delivery services. Halcyon, "…provides services that support the day-to-day activities of the Marketplace, including daily oversight of the Marketplace platform, customer support escalation, management of other vendors, and coordination with the Demand Response, Smart Grid, Marketing, Energy Efficiency, and other ComEd teams regarding Marketplace functionality and cross-team marketing campaigns." ComEd Ex. 9.0 at 6. The costs associated with Halcyon have been allocated to the energy efficiency program if the activity primarily supports energy efficiency otherwise, they are allocated to delivery services. During 2019, 93% of Halcyon's costs were allocated to delivery services.

(ii) 2019 Marketplace 2.0 Expense

Staff states that ComEd began the process of developing Marketplace 2.0 in 2019 and expects to begin making Marketplace 2.0 functions available on the Marketplace website in the second half of 2020. ComEd Ex. 9 at 8-9. Marketplace 2.0 was not operational during 2019 and 100% of the costs associated with Marketplace 2.0 have been allocated to delivery services.

In direct testimony, the AG proposed to allocate 90% of the Marketplace costs associated with the vendors as well as Marketplace 2.0, to the energy efficiency revenue requirement and 10% to the delivery services revenue requirements. This is the same methodology used by ComEd to allocate the costs billed by Simple Energy based upon Simple Energy's function. In rebuttal testimony, the AG changed its original position from proposing the allowance of 100% of Marketplace costs with an adjustment to the allocation methodology, to 100% disallowance of all Marketplace costs based upon the nature of the Marketplace itself:

> After reviewing the rebuttal testimony of Mr. Bafaloukos and reviewing additional information discussed below, I now recommend that all costs of the Marketplace be removed from the revenue requirement. All evidence indicates that the primary purpose of the Marketplace is to facilitate the sale of goods.

AG Ex. 3.0 at 19.

Staff states that the record in this proceeding demonstrates that customers use the Marketplace and benefit from it, and this evidence is undisputed. The Commission found in ComEd's prior FRU proceeding that there is nothing in the Act or the Commission's Rules limiting utilities' cost recovery to only those benefits or services with respect to which the utility is the exclusive supplier. The AG's arguments in this case do not support a deviation from that conclusion. Furthermore, the Commission is not inclined to dissuade ComEd from developing and providing its customers with services that customers actually use and perhaps may prefer. Moreover, Staff states that the Commission has already found that the sale of goods through the Marketplace does not alter the nature of the Marketplace nor cause associated costs to be unrecoverable through distribution formula rates. Staff recommends the Commission reject the AG's position in its rebuttal testimony that all Marketplace costs should be disallowed.

Staff recommends the Commission also reject the AG's alternative position to allocate 90% of all Marketplace costs to energy efficiency and 10% to delivery services. The Commission has determined that the Marketplace is related to the provision of delivery services, but the nexus between the Marketplace and energy efficiency is more tenuous. The AG points out that the Commission stated:

> The Commission notes that ComEd sufficiently detailed the expenses of the two Marketplace vendors the Company engaged and the services provided, but the Commission is troubled by the costs incurred especially in light of the failure of ComEd to sufficiently link its EE offerings with the Marketplace. The Commission finds the expenses to be reasonable, but with reservation given the limited explanation of EE Program benefits to ratepayers on the Marketplace website. ComEd is directed to improve the Marketplace to address these concerns.

Commonwealth Edison Co., Docket No. 18-1101, Order at 31 (Dec. 4, 2018). It is important to note that this Order was an energy efficiency reconciliation. The Commission determined the costs of the Marketplace to be reasonable, but their relationship to energy efficiency was not completely clear. The Commission ordered ComEd to address those concerns.

In this proceeding, ComEd has allocated to energy efficiency only those costs which can be easily shown to relate to energy efficiency with the remainder of costs allocated to delivery services. In Docket No. 18-1101, the AG argued that none of the Marketplace costs should be recovered in the energy efficiency formula rates. In this proceeding, the AG argued in its direct testimony that 90% of all Marketplace costs should be recovered through energy efficiency formula rates. It should be noted that with a few exceptions, the same customers pay for Marketplace costs whether those costs are considered energy efficiency-related or delivery services-related. As a party to the current energy efficiency FRU proceeding, Docket No. 20-0475, Staff is aware that the AG has not proposed the disallowance of any Marketplace costs, nor has it proposed to include any Marketplace costs allocated away from delivery services should its alternative proposal be accepted in the instant proceeding. Therefore, the AG's alternative proposal to remove a portion of the Marketplace costs from delivery services without a corresponding adjustment to include those costs in the energy efficiency docket results in an *ipso facto* disallowance of costs which would otherwise be considered recoverable if the AG's primary proposal is rejected. Staff recommends that both the AG's primary and alternative positions be rejected.

c. AG's Position

(i) 2019 Vendor Expense

AG witness Selvaggio identified $1.29 million of vendor expenses related to operating its Marketplace website and that ComEd seeks to include $583,507 in its delivery service revenue requirement. AG Ex. 3.1, Sch. 6. For their 2019 expenses, ComEd split Simple Energy's costs between ComEd's EE Program and revenue requirement in proportion to the number of products sold via the Marketplace to which a rebate was applied. AG Ex. 1.0 at 9-10. Meanwhile, ComEd allocated 93% of Halcyon's costs to its delivery revenue requirement based on the Company's assertion that 93% of Halcyon's time is devoted to activities related to delivery service. ComEd Ex. 9.0 at 6-7.

The AG argues that the Company has not demonstrated that its costs were reasonable or prudently incurred to provide delivery service. *Bus. & Prof'l People for the Pub. Interest v. Ill. Commerce Comm'n*, 146 Ill. 2d 175, 195-96 (1991) (*"BPI II"*). Costs that are unnecessary to the provision of service, or that the utility has not justified in amount, are not reasonable or prudent. *See Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 404-405 (2d Dist. 2010). The Marketplace primarily sells energy efficiency products. The AG maintains that the costs to enable those sales are related to ComEd's energy efficiency function – not its delivery function. The 2019 expenses for the Marketplace not reasonable, prudently incurred for, or related to delivery service should not be recovered in delivery service rates.

In addition to the 2019 Marketplace expenses being incurred to support ComEd's Energy Efficiency Program, the AG asks the Commission to recognize that the delivery revenues associated with the Marketplace platform have consistently failed to cover its costs, meaning that delivery ratepayers are subsidizing the program. *See* AG Ex. 1.0 at 18-19. The AG argues that no reasonable person would continue to operate the Marketplace in light of these shortcomings and ratepayers should not be asked to continue to support a failing enterprise.

(ii) 2019 Marketplace 2.0 Expense

Consistent with their argument to exclude Marketplace 2.0 costs from 2020 projected plant, the AG requests that the Commission exclude these costs from the Company's delivery services revenue requirement because, as indicated in regard to its other 2019 Marketplace costs, the Marketplace has not covered its direct costs, and it is unlikely that Marketplace 2.0 will cover its costs. Further, Marketplace 2.0 does not provide any customer service functions other than those already provided by ComEd at ComEd.com and through its other, extensive customer education activities. *See* Section IV.C.1.a above. ComEd allocated $249,571 to its revenue requirement for 2019 expenses related to the development of Marketplace 2.0. AG Ex. 1.0 at 12.

The AG's adjustment to remove all expenses of the Marketplace reduces jurisdictional operating expenses for both the filing year and the reconciliation year by $0.498 million and results in a $1.063 million reduction in the net revenue requirement. AG Ex. 3.0 at 27; AG Ex. 3.1, Sch. 6.

The AG asserts that if the Commission allows ComEd to include the Marketplace and Marketplace 2.0 costs in delivery services despite the lack of benefit to consumers, it should allocate their costs to delivery service in proportion to the sale of non-rebated products to rebated products. The record shows that 90% of products sold on the Marketplace have an energy efficiency rebate, demonstrating that customers utilize the Marketplace to obtain Energy Efficiency Program benefits. The Commission should allocate an equivalent percentage of the Marketplace and Marketplace 2.0's costs to ComEd's Energy Efficiency Program because the Marketplace and Marketplace 2.0 largely serve to further ComEd's Energy Efficiency Program and function as portals for the Company to sell rebated products funded by the Energy Efficiency formula rate. AG Ex. 3.0 at 28.

The PUA allows electric utilities to choose to recover their energy efficiency costs through a formula rate. 220 ILCS 5/8-103B; 220 ILCS 15/16-111.5B. Further, subsection (m) of Section 8-103B includes budget limits for the energy efficiency costs. The AG argues that by shifting costs for the Marketplace from Rider EEPP to delivery services rates, ComEd is circumventing Section 8-103B(m) of the Act that establishes budget limits for the EE costs that should be recovered through Rider EEPP. ComEd and Staff expressed concern that if the Commission adopted a disallowance of Marketplace costs because they should be included in the EE formula rate, ComEd would risk not recovering these costs because they are not presently being considered in the ComEd energy efficiency formula rate docket. The AG responds that the Act authorizes the Commission and any party to seek rehearing within 30 days of a Commission Order. 220 ILCS 5/10-113(a).

The AG urges the Commission to recognize that the Marketplace and Marketplace 2.0 are utilized for EE purposes by the vast majority of consumers who use it and limit the recovery of ComEd's Marketplace and Marketplace 2.0 costs in delivery service rates to the proportion of non-rebated products sold on the site. The AG requests that the Commission adopt the adjustment found on AG Exhibit 1.1, Schedules 3 and 4. The total impact of the alternative adjustment would be to reduce the net revenue requirement $1.308 million ($0.830 + $0.478).

d. Commission Analysis and Conclusion

The Commission has permitted the recovery of costs associated with ComEd's Marketplace since its inception in 2017. *Commonwealth Edison Co.,* Docket No. 17-0196, Order at 34 (Dec. 6, 2017). The final Order in the 2017 FRU stated:

> Record evidence shows that the Marketplace pilot program provides an easy, user-friendly platform for customers to engage in learning about and purchasing available energy efficient products. As technology advances and consumers' needs change, new initiatives should be developed to address those needs. ComEd has demonstrated that the benefits of the Marketplace are real and quantifiable, and that there is a connection between the Marketplace and the provision of delivery services.

Id. The AG claims the Marketplace's costs should be disallowed in their entirety because: (1) its purpose is to sell goods, not provide delivery services; (2) it duplicates customer service functions found elsewhere on ComEd.com; and (3) it has not covered its costs since its inception. All three arguments have been made in each of the 2017, 2018 and 2019 FRU dockets, and all three have been rejected. The Commission stated in 2017 that the Marketplace's benefits are included in the provision of delivery services. *Commonwealth Edison Co.,* Docket No. 17-0196, Order at 34 (Dec. 6, 2017). In its 2018 FRU Order, the Commission pointed out that customers may actually prefer using the Marketplace over ComEd.com to research and investigate ComEd's programs and products. *Commonwealth Edison Co.,* Docket No. 18-0808, Order at 40 (Dec. 4, 2020). And as to profitability, the Commission has repeatedly noted that this is not a factor. It is undisputed by all parties that customers do use the Marketplace and derive benefit from it. *Id.*

Because the Commission has allowed recovery of ComEd's Marketplace expenses since its inception in 2017, the Commission is not inclined to reverse its decision for several reasons. First, while the Commission is not bound by its prior holdings on any issue, as addressed in *Commonwealth Edison Co.* v. *Ill. Commerce Comm'n*, 2016 IL 118129 at ¶24 *citing Mississippi River Fuel Corp. v. Ill. Commerce Comm'n*, 1 Ill. 2d 509, 513 (1953), it is well-known law that any reversal must have a reasoned basis. *See Bus. & Prof'l People for the Pub. Interest v. Ill. Commerce Comm'n*, 136 Ill.2d 192, 228 (1989). The AG cites to no new facts nor makes any new argument which would require the Commission to determine this year that ComEd's Marketplace costs should be disallowed.

Finally, if its primary recommendation to disallow all Marketplace costs is rejected, the AG requests the Commission allocate 90% of the Marketplace's costs to the energy efficiency revenue requirement, and 10% to the delivery services revenue requirement, which was the substance of the settlement of this issue in the 2019 FRU. *Commonwealth Edison Co.,* Docket No. 19-0387, Order at 23 (Dec. 4, 2019). Also, the Commission notes that Staff points out that the AG is not making this recommendation in Docket No. 20-0475, ComEd's energy efficiency formula rate docket.

(i) 2019 Vendor Expense

The Commission notes that two vendors provide services for the Marketplace, and that no party objects to the allocation of 90% energy efficiency for the vendor Simple Energy. The AG objects to ComEd's proposal to allocate 93% of Halcyon's costs to delivery services, which was based on historical experience. Halcyon provided daily oversight of the Marketplace platform, customer support escalation, management of other vendors, and coordination with ComEd's Demand Response, Smart Grid, Marketing, Energy Efficiency, and other teams regarding Marketplace functionality and cross-team marketing efforts. During 2019, Halcyon personnel actually spent approximately 94% of their time on activities related to delivery services, but ComEd maintained the 93% allocation. The AG proposes the same allocation of costs as those for Simple Energy: 90% energy efficiency and 10% delivery services. The Commission agrees with ComEd and Staff that ComEd's method of allocating based on the services the vendor actually provided is reasonable. Because they predominantly consist of general tasks unrelated to energy efficiency, their services should not be recovered as such.

(ii) 2019 Marketplace 2.0 Expense

The AG seeks to disallow all costs associated with ComEd's Marketplace 2.0, an upgrade on its Marketplace program which was redesigned in 2019 to allow for more in-house functionality. Because Marketplace 2.0 was developed to further sale of energy efficiency products, the AG claims, the development costs should also be allocated to 90% energy efficiency, 10% delivery. Again, the Commission points to its findings in earlier FRUs which state that the Marketplace's function is included in the provision of delivery services and rejects the AG's proposal. *See generally, Commonwealth Edison Co.,* Docket No. 17-0196, Order at 34 (Dec. 6, 2017). On the contrary, the functions of Marketplace 2.0 are basically the same as the original Marketplace; ComEd has merely brought more of the functions in-house. Specifically, the development costs relate to and include: (i) user experience design, which enables the website to display information, images, graphics, and links in an intuitive manner; (ii) systems integration services that enable ComEd's existing MyAccount and MyWallet tools to be used within the Marketplace; (iii) related software licenses; and (iv) internal labor associated with project management, IT, and testing. None of these enhancements relate to energy efficiency; therefore, the Commission approves the allocation of these expenses to delivery services.

2. Amortization of Excess Deferred Income Taxes

a. ComEd's Position

ComEd asserts that the AG again challenges ComEd's amortization of Excess Deferred Income Taxes ("EDIT") in accordance with the Commission's resolution of this same issue, for the same EDIT. *Commonwealth Edison Co.,* Docket No. 18-0808, Final Order at 57-58 (Dec. 4, 2018); *Commonwealth Edison Co.,* Docket No. 19-0387, Final Order at 37 (Dec. 4, 2019). ComEd argues that the AG does so based entirely on the same erroneous and rejected premises and arguments. ComEd states that AG witness Selvaggio concludes that ComEd is "obligated to refund to consumers the EDIT amounts," and then incorporates, updates, and adopts AG witness Brosch's proposed (and rejected) calculation of this adjustment from the past two years. AG Ex. 1.0 at 5-6, 7-8; ComEd Ex. 8.0 CORR at 13-14. ComEd avers that the Commission has already rejected that argument twice. ComEd Ex. 8.0 CORR at 15; ComEd Ex. 13.0 at 3. ComEd explains that using the Average Rate Assumption Method ("ARAM") to determine the EDIT amortization period – as ComEd has done and as the Commission has duly approved – ensures that customers that pay over time for the underlying assets that give rise to the deferred taxes receive the benefit of the lower tax rate. ComEd argues that this is a reasonable and principled approach and, indeed, the most equitable to all customers. ComEd further argues that this is what ComEd has done in the past, what the Commission has duly approved and found just and reasonable, and it is how the other protected components of EDIT are amortized.

(i) Introduction

ComEd states that in 2017 and 2018, Illinois and federal corporate tax rates applicable to ComEd changed. On July 1, 2017, Illinois increased its total corporate tax rate from 7.75% to 9.5%. The Tax Cuts and Jobs Act ("TCJA") reduced the federal corporate income tax rate from 35% to 21%, effective January 1, 2018. ComEd Ex. 8.0 CORR at 10; ComEd Ex. 8.08; *Commonwealth Edison Co.,* Docket No. 19-0387, ComEd Ex. 8.0 at 19 (Dec. 4, 2019). There is no dispute that ComEd has reflected those changes in its revenue requirement calculation. ComEd states that the AG, however, continues to disagree with the Commission, ComEd, and Staff about the most appropriate amortization period for one specific category of EDIT stemming from those tax changes, namely EDIT related to what is referred to as "unprotected property." ComEd Init. Br. at 42.

ComEd explains that the AG seeks to alter the amortization period approved by the Commission two years ago and just last year for that unprotected property-related EDIT, which ComEd appropriately used. ComEd further explains that last year and the year before, after full litigation and a detailed examination of the evidence, the Commission approved using a uniform amortization period for this EDIT: ARAM, which is currently approximately 39.5 years, approximately 37.5 of which are remaining. *Commonwealth Edison Co.,* Docket No. 18-0808, Final Order at 57-58 (Dec. 4, 2018); *Commonwealth Edison Co.,* Docket No. 19-0387, Final Order at 37 (Dec. 4, 2019). According to ComEd, this is consistent with ComEd's approach to amortize all types of property-related EDIT over periods consistent with the useful lives of the underlying assets and with the accounting treatment of the related underlying ADIT. ComEd Ex. 8.0 CORR at 17. ComEd explains that the AG, on the other hand, proposes an arbitrary 5-year amortization period for this EDIT. ComEd argues that the AG's proposed period is inconsistent with both the depreciation of the underlying assets and with the treatment of other categories of EDIT. *Id*. at 16. ComEd avers that the Commission has already addressed this issue twice in detail, and the AG offers nothing new in support of its arguments.

ComEd asserts that at the center of this dispute is a basic misunderstanding by the AG. ComEd explains that the AG's arguments in favor of an abbreviated amortization period rely entirely on the incorrect premise that ComEd's customers have already funded the underlying ADIT, so the AG believes the related EDIT that is a product of the TCJA should be "refunded" to customers quickly, using an arbitrary time period. ComEd contends that the AG is wrong, and there is no "refund" at issue because ComEd's customers have not pre-paid any deferred taxes. Moreover, the amortization period approved by the Commission and currently in effect is more equitable for customers, ensuring that the same customers who are paying over time for the underlying assets giving rise to the EDIT also see the benefits of the lower tax rates. ComEd argues that the Commission should reject the AG's argument and affirm its decision with regard to EDIT amortization. ComEd Ex. 8.0 CORR at 11.

ComEd avers that for the past three years the AG has repeatedly and misleadingly characterized the EDIT issue by stating that there is "no dispute" or it is "uncontested" that the EDIT at issue must be "refunded" or "returned" to customers. AG Init. Br. at 44. *See also, e.g., Commonwealth Edison Co.*, Docket No. 18-0808, Order at 49-52 (Dec. 4, 2018); AG Init. Br. at 25; AG BOE at 3; Oral Argument Tr. (Nov. 27, 2018) at 8; *Commonwealth Edison Co.*, Docket No. 19-0387, Order at 32 (Dec. 4, 2019); AG Init. Br. at 20, 22, AG Reply Br. at 23, AG BOE at 5, Oral Argument Tr. at 11-12 (Nov. 25, 2019). According to ComEd, whether the EDIT at issue needs to be "refunded" or "returned" is actually at the heart of the dispute. ComEd argues that it has explained repeatedly that ComEd has not collected any portion of the EDIT at issue from its customers, and therefore no EDIT can be refunded or returned to customers. ComEd Init. Br. at 42, 43. *See also, e.g.*, *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 42-43 (Dec. 4, 2018); ComEd Init. Br. at 48; ComEd Reply Br. at 34-35, ComEd RBOE at 18-19; Oral Argument Tr. at 25-26 (Nov. 27, 2018); *Commonwealth Edison Co.*, Docket No. 19-0387, Order at 24 (Dec. 4, 2019);, ComEd Init. Br. at 33, ComEd Reply Br. at 15, ComEd RBOE at 12, Oral Argument Tr. at 21-22 (Nov. 25, 2019); ComEd Reply Br. at 4-5.

ComEd argues that the AG cannot be unaware of these facts. ComEd explains that it is therefore puzzling why the AG continues to present this portion of the issue as undisputed or uncontested. To be clear, ComEd only collects – and ComEd's customers only pay – the current year's income tax expense at the currently applicable statutory rate. Stated yet another way, ComEd explains, the annual revenue requirement does not include a dollar amount for recovery of deferred income tax expense. ComEd further explains that is why it is important to ensure that the EDIT reversal matches the ADIT reversal – to ensure that the overall tax impact equals the amount that customers should pay at the current tax rate (ADIT reversal amount + EDIT reversal amount = deferred taxes paid at the current rate).

(ii) The Commission Already Addressed and Resolved this Issue

ComEd avers that as a preliminary matter, in ComEd's last two FRU cases the parties actively litigated this precise issue. In both dockets, the parties provided three rounds of pre-filed testimony addressing these topics, the AG cross-examined ComEd's witness at the evidentiary hearings, and the Commission heard oral argument on this issue. ComEd Ex. 8.0 CORR at 12-13. The Commission agreed with ComEd's position. *Commonwealth Edison Co.,* Docket No. 18-0808, Final Order at 57-58 (Dec. 4, 2018). The Commission then denied the AG's Petition for Rehearing both times, and the AG did not appeal the issue in 2018. *See Notice of Comm'n Action,* Docket No. 18-0808, (Jan. 22, 2019); Mem. to the Comm'n (Jan. 7, 2019); *Notice of Comm'n Action,* Docket No. 19-0387, (Jan. 21, 2020); Mem. to the Comm'n (Jan. 9, 2020). The AG did appeal this issue in 2019. AG Ex. 1.0 at 8; Illinois Appellate Court, First Judicial District, No. 1-20-0366, Notice of Appeal (Feb. 24, 2020). That appeal is pending, and no briefs have been filed.

ComEd explains that all parties agree that since last year, there have been no changes in material facts or governing law regarding this issue. ComEd Ex. 8.0 CORR at 14-15; Staff Ex. 6.0 at 5-6. The exact same EDIT (less two years' amortization) is at issue here. *See, e.g.*, ComEd Ex. 8.09 (AG Data Request Response to ComEd-AG

2.05, explaining that the "December 31, 2018 balance" is the same in Docket No. 19-0387 and in this FRU. ComEd states that the AG agrees that there are no new and different facts or changes in the accounting principles regarding this issue. *See* ComEd Ex. 8.09 (AG Data Request Response to ComEd-AG 2.04). According to ComEd, AG witness Selvaggio simply adopts and updates AG witness Brosch's calculation of the proposed adjustment from last year's FRU. ComEd Ex. 8.0 CORR at 13-14. ComEd asserts that the evidence in support of the Commission's decision last year was overwhelming. ComEd contends that the Commission's conclusions in Docket Nos. 18-0808 and 19-0387 were well-reasoned, principled, and correct. According to ComEd, there is no basis to revisit the issue, or for the Commission to change its decision. ComEd argues that the Act generally prohibits attempts to serially revisit Commission decisions and that the Act permits only one petition for rehearing. 220 ILCS 5/10-113(a); *see also Ameren Ill. Co. d/b/a Ameren Ill. v. Ill. Commerce Comm'n*, 2012 IL App (4^{th}) 100962, ¶ 172. ComEd further argues that a party may file a new petition addressing the same subject only when based upon "a new and different state of facts after 2 years." 220 ILCS 5/10-113(a).

ComEd explains that although the Commission is not legally bound by its prior orders, it must articulate a reasoned basis for a departure from them. *Citizens Util. Bd. v. Ill. Commerce Comm'n,* 166 Ill. 2d. 132 (1995). ComEd notes too that the Commission must have substantial evidence to support its decision. *Id.* Moreover, the parties advocating a change should identify "meaningful differences between the facts and circumstances" relating to both proceedings. *Ill. Commerce Comm'n On Its Own Motion v. Consumers Gas Co.,* Docket No. 07-0570, Order at 32 (Nov. 6, 2014). ComEd further explains that in order for the Commission "'to do an about face with regard to its prior decision,' a party must make a clear showing with proper evidentiary and legal support." *Ameren v. Ill. Commerce Comm'n,* 2012 IL App (4th) 100962, ¶¶ 68, 79 (involving new legal authority and additional evidence and arguments); *see also Mt. Vernon Educ. Ass'n v. Ill. Educ. Labor Relations Bd.,* 278 Ill. App. 3d 814, 823 ("While an agency is not bound by its prior determinations, changes to agency standards can only be made where they are not arbitrary or capricious."); ComEd Ex. 8.0 CORR at 14.

ComEd notes that while the AG suggests the Commission should reach a conclusion that is directly contrary to its previous decisions, the AG does not provide a reasoned basis for distinguishing them from the instant case. And as a practical matter, ComEd asserts, this issue has the potential to recur annually over the next 38 years. ComEd Ex. 8.0 CORR. at 14-15. Both ComEd and Staff agree that ComEd should not be forced to re-litigate this issue every one of those years. *Id*. ComEd contends that doing so would be a waste of resources for the Commission, ComEd's customers, and the AG. *Id*. at 14. ComEd states that the record once again supports ComEd's proposed – and Staff-supported and Commission-approved – amortization period.

Moreover, ComEd notes, there is only one balance of EDIT related to the TCJA. No new EDIT arose in 2019, and none will arise in future years. If any EDIT arises in the future, ComEd explains, it would be as a result of another change in the federal or state income tax rate. As the parties have discussed over the last few years, and ComEd also explains, EDIT represents the one-time impacts that ComEd recorded to remeasure its deferred income tax balance. *See, e.g.,* AG Ex. 3.3. Thus, ComEd explains that unlike many other issues presented to the Commission that recur in each rate case because the underlying activity recurs, there was no new or different re-measurement of deferred taxes that occurred in 2018 that would form the basis of an appropriate argument in this case. In sum, ComEd notes aside from the two years that ComEd has already amortized, both the EDIT balance at issue, and the disputed question – what amortization period to apply to that balance – are identical to those at issue in Docket Nos. 18-0808 and 19-0387.

(iii) Background: ADIT and EDIT

ComEd states that if the Commission chooses to substantively address this issue again, it bears reviewing the facts about EDIT and ADIT. As ComEd explains, ADIT reflects the temporary difference between when an expense (or revenue) is recognized in a company's "books" and when the company recognizes that expense (or revenue) on its tax return. Deferred income taxes can be liabilities or assets. ComEd Ex. 8.0 CORR at 17. A deferred tax liability ("DTL"), a future tax liability, occurs when ComEd realizes a tax benefit before it recognizes the item for financial accounting purposes. When this happens, ComEd generally reduces rate base to reflect the deferral of the liability. Conversely, a deferred tax asset ("DTA") occurs when the tax benefit is realized in the future, after it has been recognized for financial accounting purposes. When this happens, ComEd generally increases rate base (or offsets deferred tax liabilities) to recognize the delay. ComEd Ex. 8.08; *Commonwealth Edison Co.*, Docket No. 19-0387, ComEd Ex. 8.0 at 20.

ComEd explains that investments in plant assets can affect deferred income taxes over many years. When a utility asset is put into service, a DTL arises from the difference between when associated depreciation is recognized for book versus tax purposes. Over the useful life of the asset those differences, and the corresponding impact on deferred taxes, are reversed. Critically, the reversal of the DTA or DTL occurs over the same period as the useful life of the asset. As ComEd witness Tracy explained, customers pay for assets over their useful lives – for ComEd, the average useful life for all property is 39.5 years. ComEd Ex. 8.0 CORR at 17.

ComEd further explains that when corporate income tax rates change, ComEd remeasures its ADIT balances to reflect the new rate at which deferred taxes will be paid to the government in the future. The jurisdictionalized portion of this remeasurement amount – the EDIT – is included in a Regulatory Asset/Liability and amortized over time. The amortization of this EDIT has the effect of either increasing (if the tax rate increased, as was the case with the Illinois tax rate change) or decreasing (if the tax rate decreased, as was the case with the federal tax rate change) ComEd's revenue requirement. ComEd Ex. 8.08; *Commonwealth Edison Co.,* Docket No. 19-0387, ComEd Ex. 8.0 at 19-20. ComEd states that these principles are not in dispute.

ComEd explains that in this case, its state tax-related ADIT obligation was previously recorded on the presumption that income would continue to be taxed by Illinois at a 7.75% rate. However, it will now be taxed at a higher 9.5% rate, and ComEd's ADIT obligation therefore must be increased to reflect the new tax rate. This incremental increase represents EDIT. Similarly, the federal tax- related ADIT obligation was recorded on the presumption that income would continue to be taxed by the federal government at a 35% rate, but it will now be taxed at a lower 21% rate. This incremental decrease is also EDIT. ComEd Ex. 8.08; *Commonwealth Edison Co.,* Docket No. 19-0387, ComEd Ex. 8.0 at 21. This, too, ComEd notes, is undisputed.

As ComEd explains, under IRS regulations, EDIT is segregated into three categories: "protected" plant-related EDIT, unprotected plant-related EDIT, and unprotected non-property related EDIT. ComEd also refers to plant-related EDIT as property-related EDIT. The EDIT related to each of these categories is amortized and flows through to customers over a certain period. ComEd Ex. 8.0 CORR at 12. The "protected" EDIT relates to ADIT balances arising from accelerated tax depreciation that, pursuant to the federal tax code, must be flowed through to customers using the prescribed methodology referred to as ARAM. *Id*. For ComEd, ARAM is 39.5 years. *Id*.

ComEd further states, however, amortization based on underlying asset lives is not just a requirement of federal law applicable to protected EDIT. ComEd explains that amortizing any EDIT in this way ensures that the customers who are paying for the underlying property assets through depreciation and related ADIT – over approximately 39.5 years – are the same customers who will receive the benefits of the lower tax rate provided through the related EDIT. ComEd Ex. 8.0 CORR at 12.

ComEd explains that in this case, the AG contests the amortization period for only one category of EDIT: unprotected property-related EDIT. AG Ex. 1.0 at 8-9; ComEd Ex. 8.0 CORR at 10. ComEd further explains that ComEd proposes, Staff supports, and the Commission has approved using ARAM (39.5 years, 37.5 of which remain) for this type of EDIT. ComEd Ex. 8.0 CORR at 10; Staff Ex. 6.0 at 6; *Commonwealth Edison Co.,* Docket No. 18-0808, Final Order at 57-58 (Dec. 4, 2018); *Commonwealth Edison Co.,* Docket No. 19-0387, Final Order at 37 (Dec. 4, 2019). ComEd notes that the AG asserts that ComEd should use a 5-year period instead. AG Ex. 1.0 at 7.

(iv) Intergenerational Equity / Inequity

ComEd states that it applied a principled approach, consistent with good policy, in amortizing EDIT related to unprotected property and non-property related EDIT. According to ComEd, the 39.5 year amortization period assures that EDIT related to unprotected property and non-property is amortized over the same period that the original underlying book to tax differences, or ADIT, reverse and the same time period over which customers pay for the underlying assets through depreciation expense. ComEd Ex. 8.0 CORR at 11. As explained below, ComEd argues, this is not only sensible and fair, it minimizes potential harms.

ComEd explains that because the average useful life for all of ComEd's property is 39.5 years and those assets are being paid for by customers over 39.5 years, recognition of a change in tax rate over that timeframe ensures ratemaking fairness to customers, or intergenerational equity. ComEd Ex. 8.0 CORR at 17. That is, the same customers that are paying for the assets receive any tax benefits related to the assets arising out of the tax rate change. Indeed, ComEd notes that because the deferred tax liability continues to include a balance based on the higher tax rate that was in force, it is critical to flow the EDIT though to customers over the same time period the underlying deferred tax liability reverses – namely, the life of the underlying asset. ComEd Ex. 8.0 CORR at 16-17.

ComEd contends that it is important for this “matching” principle to be applied to ensure that customers who are ultimately paying for the underlying assets through depreciation and related ADIT, inclusive of the original higher tax rate over time, are also getting the benefit of the related EDIT from the new lower tax rate over that same period of time. ComEd Ex. 8.0 CORR at 11. In contrast, ComEd avers, the AG’s approach in this case utilizes different amortization periods for protected (39.5 years, 37.5 of which remain) and unprotected (5 years) plant-related EDIT. *Id*. at 9-10.

According to ComEd, its proposal promotes intergenerational equity, while the AG’s approach ensures intergenerational inequity. ComEd explains that if different amortization periods are applied, as the AG suggests, a different group of customers will receive the benefits of the tax change than those who actually pay for the underlying assets. The record contains illustrations of both the consistent treatment ComEd proposes and the AG’s inconsistent treatment. ComEd Ex. 13.0 at 14; ComEd Ex. 13.08.

(v) ComEd’s Customers have not Pre-Paid ADIT or EDIT

ComEd asserts that AG witness Selvaggio tries to avoid these facts by claiming that customers have already paid for the ADIT and that this pre-payment requires ComEd to flow through the EDIT on an expedited basis, *i.e*., to “return” the EDIT to customers that she asserts have already paid the related ADIT. AG Ex. 1.0 at 8; AG Ex. 3.0 at 10. ComEd contends that the evidence indisputably shows that Ms. Selvaggio is wrong and ComEd customers have not already paid for the underlying ADIT. ComEd Ex. 8.0 CORR at 15.

ComEd states that under the formula, the taxes charged to ComEd’s customers are based on ComEd’s actual tax liability, not its liability before deferral. ComEd argues that when a tax deduction is taken, two journal entries are recorded – one to reduce the amount of current tax that is no longer payable (reducing a current tax expense and a current tax payable) and another to establish that the tax will be deferred and paid in the future (increasing a deferred tax expense and establishing a DTL). Both journal entries are for the same amount, and they have opposite effects on the revenue requirement, essentially cancelling each other out. Specifically, when ComEd records jurisdictional ADIT (the DTL) and the related deferred tax expense, it also simultaneously records a credit to current tax expense for an identical amount, which offsets the deferred tax expense in its entirety. Thus, ComEd explains that customers do not pay for ADIT because they receive an equal credit of current tax expense that negates this “payment” of deferred tax expense. ComEd notes that there is no increase in the revenue requirement that could result in customers paying for the ADIT or EDIT. ComEd Ex. 8.0 CORR at 15-16. ComEd further explains that the net impact on expense from a ratemaking perspective is zero. *See id*. And ComEd states that as it has explained in prior years, the establishment of the DTL flows through as a reduction to rate base, actually decreasing the revenue requirement. ComEd Ex. 13.08; *Commonwealth Edison Co.,* Docket No. 19-0387, ComEd Ex. 8.0 at 32; ComEd Ex. 11.0 at 17.

ComEd explains that Schedule C-1 provides a summary of the tax inputs for these journal entries in a way that already nets the various components of taxes that flow into the revenue requirement. ComEd contends that Ms. Selvaggio claims that this schedule is "proof" that ComEd's customers have pre-paid deferred taxes. AG Ex. 3.0 at 10 (stating that Schedule C-1 contains "a provision for deferred income taxes" that is "included in the revenue requirement as a cost to be recovered from customers in utility rates"). But, as ComEd argues, Ms. Selvaggio fails to review and understand the supporting schedules that flow into Schedule C-1 and that provide full transparency into what are included in those balances, prior to any netting that takes place. ComEd Ex. 13.0 at 10. Specifically, as ComEd explains, Schedule C-5, page 2, breaks down the summarized lines on Schedule C-1 and provides the tax components that flow into Schedule C-1. *Compare* ComEd Ex. 13.03, Sch. C-1 *with* ComEd Ex. 13.03, Sch. C-5, page 2. This schedule shows that the deferred tax expense is offset by the current tax expense decrease as a result of the tax deferral. ComEd Ex. 13.0 at 10.

ComEd then explains that Schedule C-1 does summarize many of the tax impacts that flow into the revenue requirement. ComEd Ex. 13.0 at 11; *see also* ComEd Ex. 13.03, Sch. C-1, lines 20 through 24. As ComEd illustrates, in row 22, column (B), Deferred Taxes equate to nearly $72 million. *Id*. But, ComEd contends, Ms. Selvaggio errs when she cites this line item as proof that ComEd collects revenues in rates that account for these deferred taxes (AG Ex. 3.0 at 10), because she does not explain – or even acknowledge – the fact that the deferred taxes are offset by an equal decrease to current tax expense, as described earlier. ComEd Ex. 8.0 CORR at 16. ComEd argues that she fixates on only half of the picture and ignores the ultimate bottom line. ComEd's Schedule C-5, page 2, discloses the various federal and state components of current and deferred taxes that are pertinent to this issue, before any netting occurs on Schedule C-1. ComEd Ex. 13.0 at 11; ComEd Ex. 13.03, Sch. C-5, page 2.

ComEd demonstrates that the deferred tax expense is equally offset by a decrease in the current state and federal taxes (lines 3 and 5) and is netted out of the state and federal income tax lines (lines 2 and 4, respectively), before arriving at the total income taxes owed that flow through the revenue requirement (line 8) and that are reflected on the Schedule C-1 summarization. ComEd Ex. 13.0 at 12. ComEd further explains that Schedule C-1, line 20 thus shows State Income Tax of ($4,152,000), which is line 2 plus line 3 in the Schedule C-5 summary table above; and Federal Income Taxes of ($8,306,000) on Schedule C-1 line 21, which is line 4 plus line 5 in the Schedule C-5 summary table above. *Id*.; *see also* ComEd Ex. 13.03, Sch. C-1; ComEd Ex. 13.03, Sch. C-5, page 2.

ComEd also states that it is important to note that the Deferred Amount Applied to Current State Taxes and the Deferred Amount Applied to Current Federal Taxes are the inverse of the amounts reported in Deferred Taxes. These amounts in lines 3 and 5 are the offsetting current tax amounts that ComEd has been describing for the past three years and that have the effect of negating the related deferred tax expense in line 6. ComEd Ex. 13.0 at 12.

ComEd notes that the sum of the the state and federal deferred amounts applied to current state and federal taxes is ($126,610,000). ComEd explains that included in this ($126,610,000) are EDIT amortization of ($57,887,000) and other tax benefits of ($5,357,000) that total to ($63,244,000) (*see* ComEd Ex. 13.01, App 9, line 13). ComEd also explains that excluded from this amount are Investment Tax Credits ("ITCs") and other discreet adjustments ($8,291,000). ComEd provided a table that summarizes the math and the references to the supporting schedules. ComEd Ex. 13.0 at 12-13.

ComEd summarizes that because current customers have not funded the ADIT, there is no justification to view the EDIT as a pending “refund” that should be made as quickly as possible. As shown above, ADIT assets and liabilities are netted out prior to the tax gross up in the formula. ComEd states there is no mismatch in ComEd’s proposal between what customers have paid for the assets to date and what they will pay under the tax rates that will be applied only prospectively.

ComEd explains that the benefits of new tax rates should, thus, apply prospectively, just as the new rates apply prospectively, both over the life of the assets. ComEd contends that the AG is mistaken to assert otherwise. To treat the benefits of the lower tax rate and the funding of the underlying asset through depreciation and ADIT incongruously (in this case, returning the tax benefits over 5 years, while the payment of the underlying asset is spread over 39.5 years, 37.5 of which remain) would provide all of the tax benefit to customers in the first five years, leaving nothing for the customers who are still funding the related assets in the later years. Thus, ComEd argues, Ms. Selvaggio’s recommendation is actually less equitable to customers than ComEd’s approach and diminishes intergenerational equity. According to ComEd, her recommendation provides an immediate payment of disproportionate benefits to current customers and unfairly penalizes future customers who continue to fund long-lived utility assets over their remaining useful lives. ComEd Ex. 13.0 at 8-9.

(vi) ComEd’s Collection and Payment of Taxes

ComEd explains that it is important to note that ComEd does pay current taxes, and customers do *eventually* pay deferred taxes (at the rate in effect at the time of the future payment). But ComEd states: the customer impact of the deferred taxes occurs as the book to tax timing difference reverses in the <u>future</u>. ComEd Ex. 8.0 CORR at 16. At the time the deferred taxes become due in the future, they are passed through to customers. *Id*. Specifically, as ADIT reverses over time, the previous reduction of rate base is reversed, increasing rate base. ComEd explains that higher rate base = higher earnings = higher taxes (at the current rate). Customers pay taxes on that higher rate base attributable to the ADIT reversal. This is the current tax due at the current statutory rate, and these are the taxes that ComEd’s customers pay. ComEd Ex. 13.0 at 13.

ComEd further explains that ComEd only collects – and ComEd’s customers only pay – the current year’s income tax expense at the currently applicable statutory rate. ComEd argues that this is exactly why it is important to ensure that the EDIT reversal matches the ADIT reversal – to ensure that the overall tax impact equals the amount that customers should pay at the current tax rate (ADIT reversal amount + EDIT reversal amount = deferred taxes paid at the current rate). ComEd Ex. 8.0 CORR at 16.

ComEd states that in this FRU proceeding, for example, the currently due amount is $105,642,000 as shown in ComEd Ex. 13.01, Page 2, Lines 15, 18, and 19 and ComEd Ex. 13.05, Sched. C-1 FY, Page 1, Lines 19-24. ComEd explains that this $105,642,000 represents the total income taxes for the filing year, after further adjustments unrelated to EDIT, for the rates in effect in 2020, as opposed to the reconciliation year figure before adjustments of $75,827,000 used in Section

(IV)(B)(2)(e) of ComEd's Initial Brief. ComEd clarifies that none of that amount represents customers' pre-payment of ADIT or EDIT. As ComEd explains, past tax payments have appropriately reflected the tax rates in existence in those years on currently payable taxes, and no customer has yet paid deferred taxes associated with the new, lower rates for future years. ComEd Ex. 8.0 CORR at 15-16. ComEd explains that by definition these taxes have been deferred – neither ComEd nor its customers have paid them. Stated another way: ComEd has not collected any money from customers to fund these taxes, and ComEd's customers have not paid any money to fund these taxes. ComEd avers there is simply no money waiting to be "refunded." *Id*. at 15; ComEd Ex. 13.0 at 3.

(vii) Potential Appellate Reversal is Unlikely

ComEd explains that the AG speculates that, depending on timing, the Commission may need to apply an appellate court's reversal of the Commission's decision in last year's FRU to this case. While that is theoretically possible, ComEd argues that it is also highly unlikely. First and substantively, ComEd avers that there is no basis for the appellate court to overturn the Commission's prior decisions.

Second and procedurally, the AG just requested a fourth extension to file its opening appellate brief, which is now due November 5, 2020. Illinois Appellate Court, First Judicial District, No. 1-20-0366, AG Motion for Extension of Time to File Opening Brief (Sept. 23, 2020); Order granting AG Motion for Extension of Time to File Opening Brief (Sept. 29, 2020). ComEd explains that absent further extensions, that leaves only 89 days between when the AG currently plans to file its initial appellate brief and February 2, 2021 – the latest possible date for the Commission to grant or deny rehearing in this case. 83 Ill. Adm. Code 200.880(a) and (d). Within that timeframe, the parties would need to complete response and reply briefing and oral argument, and the appellate court would need to prepare and render a written decision. ComEd notes that an FRU appeal has never been briefed and decided that quickly. *See, e.g.,* Appellate Docket No. 1-12-2860 (2011 FRU Appeal) (469 days elapsed between initial brief and decision); Appellate Docket No. 1-13-0302 (2012 FRU Appeal) (387 days elapsed between initial brief and decision); Appellate Docket No. 1-14-0357 (2013 FRU Appeal) (124 days elapsed between initial brief and voluntary dismissal); Appellate Docket No. 1-15-0632 (2014 FRU Appeal) (CUB voluntarily withdrew the 2014 appeal before briefing). No party filed an appeal after the 2015 through 2018 FRUs. ComEd argues that a chance of an appellate decision impacting this issue in this FRU is thus very slim.

(viii) COVID-19 is Not a Legitimate Reason to Revisit the EDIT Issue for a Third Time

According to ComEd, the AG is using a public health emergency – the COVID-19 pandemic – to attack the Commission's prior decisions on a completely unrelated issue – amortization of EDIT. *See* AG Init. Br. at 44. ComEd explains that as Staff recognizes, COVID-19 is not a reason to revisit the EDIT issue yet again. ComEd further claims, and Staff also recognizes, the Commission and the parties – including both ComEd and the AG – have already taken extraordinary steps to address the COVID-19 pandemic and its impact on customers, convening Docket No. 20-0309, which among other things, instituted a moratorium on disconnections and implemented various customer assistance commitments and undertakings by stipulation of the parties. *See* ComEd Ex. 13.0 at 16; *Commonwealth Edison Co.*, Docket No. 20-0309, Order (June 18, 2020); *see also Commonwealth Edison Co.*, Docket No. 20-0309, Staff's Unopposed Motion for Entry of an Order Approving and Adopting Stipulation Resolving All Issues between Various Parties and Exhibit A (Stipulation) (June 10, 2020).

Moreover, ComEd argues, the AG has offered no evidence to indicate that the financial impacts of the COVID-19 pandemic will be resolved within the AG's arbitrary 5-year amortization period. And as ComEd witness Tracy testified, there is no way to know what will happen in the future. For example, ComEd notes, this is a presidential election year and the outcome of the election could certainly change the future impact of the TCJA: taxes could go up again or remain the same indefinitely. ComEd Ex. 13.0 at 16. ComEd explains this is yet another reason why the approach that ComEd has implemented using the ARAM – that Staff supports, and that the Commission has twice approved – is the correct amortization period. According to ComEd, it is certainly superior to the AG's results-oriented approach. *Id.*

(ix) The AG is Wrong on the Law and the Facts

ComEd notes that the AG claims that the Commission's decisions in 2018 and 2019 "erroneously accepted ComEd's argument that EDIT was not funded by ratepayers." AG Init. Br. at 45. And for the second year in a row, the AG cites to case law in an attempt to prove that incorrect point. AG Init. Br. at 45; *Commonwealth Edison Co.*, Docket No. 19-0387, Order at 33-35 (Dec. 4, 2019); AG BOE at 7-13; ComEd RBOE at 9-11. ComEd argues that the AG is wrong on the law and the facts.

First, ComEd argues that similar to last year, the cases that the AG cites do not support the AG's false proposition that ComEd's customers have funded ComEd's EDIT. ComEd states that the cases the AG cites primarily discuss the uncontroversial question whether ADIT must be removed from rate base because it is not supplied by shareholders. *See, e.g., CILCO v. Ill. Commerce Comm'n,* 252 Ill. App. 3d 577, 583 (3d Dist. 1993)*; Ameren Ill. Co. d/b/a Ameren Ill. v. Ill. Commerce Comm'n,* 2013 IL App (4th) 121008 ¶ 34. As ComEd has explained, ADIT represents a deferral of ComEd's tax liability, not a prepayment of tax funded by customers. *See, e.g.,* ComEd Ex. 8.0 CORR. at 15-16.

ComEd then explains that just as the name implies, the government allows ComEd to defer payment of certain income taxes until some point in the future. ComEd Ex. 13.08. Nonetheless, ComEd notes that it properly deducts ADIT from rate base because investors do not supply the funds – they have made no investment and are therefore not entitled to earn a return on that non-investment. ComEd Ex. 13.08 (Docket No. 19-0387, ComEd Ex. 11.0 at 17). Instead, as ComEd explains, ComEd passes the benefit of the deferral on to customers by deducting that amount from rate base.

ComEd contends that the decisions the AG quotes state that if utilities do not net ADIT against rate base then – and only then – would ADIT amount to an expense to customers. *See Ameren Ill. Co. d/b/a Ameren Ill. v. Ill. Commerce Comm'n*, 2013 IL App (4th) 121008, ¶¶ 34-40. But that is not the case here according to ComEd. ComEd states that it does appropriately exclude ADIT from its rate base calculation. ComEd Ex. 13.08.

So, as ComEd explains, in accordance with the case law that the AG cites, ComEd does reduce rate base for ADIT, but not because those funds are supplied by customers.

ComEd further explains that ComEd reduces rate base because those funds are not supplied by investors – they have essentially been "supplied" by the government through what is akin to an interest-free loan (via deferral of tax payments to a later date). ComEd Ex. 13.08. According to ComEd, as the decisions the AG cites illustrate, "charging" customers for that same cost of capital by increasing rate base would be improper double dipping. *Id*. ComEd argues that this is quite simply not an issue in this case.

Second, ComEd notes, the Commission's decision on the EDIT issue here must be based on the facts and evidence in the record in this case. ComEd argues that the record evidence shows unequivocally that ComEd only collects – and ComEd's customers only pay – the current year's income tax expense at the currently applicable statutory rate. ComEd further argues that this means that ComEd does not collect – and ComEd's customers do not fund – deferred taxes, which includes both ADIT and EDIT. *Id.*

As ComEd discussed last year when the AG raised this same issue and cited the same case law in a failed attempt to prove erroneous facts, *BPI II* is not applicable here. *BPI II* was related to a traditional Article IX rate case – not an FRU. ComEd notes that, the formula rubric, which applies to ComEd, is updated on an annual basis, and does not result in prepayment or advance funding of EDIT by customers. ComEd Ex. 13.0 at 10-13. As ComEd witness Tracy testified, the formula rate brings in both the increase and the decrease to current taxes resulting from the originating journal entries. *Id*. ComEd explains, this means that the impacts offset, no charges are passed through to customers, and no charges end up being "prepaid" by customers. *Id*. To be clear, ComEd argues, its customers only pay the current tax due at the current statutory rate.

ComEd contests that the facts were different in *BPI II*. In that case, the Tax Reform Act of 1986 changed the tax rate from 46% to 40% for 1987, and to 34% for subsequent years. *BPI II* at 257. But, as ComEd explains, there was no formula rate mechanism at that time, and ComEd did not file for a rate increase until August 21, 1987. *Commonwealth Edison Co*., Docket Nos. 87-0427, et al. (Cons.), 1988 WL 391522, at *1 (Dec. 30, 1988) ("*Sixth Interim Order*"), *rev'd by Bus. & Prof'l People for Pub. Interest v. Ill. Commerce Comm'n*, 136 Ill. 2d 192 (1989). Thus, in that case ComEd explains, because ComEd's customers continued to pay rates using a 46% tax rate, even after the lower tax rates enacted in 1986 took effect, ComEd's customers may have paid for a certain portion of overestimated future taxes or EDIT. ComEd Reply Br. at 9-10.

ComEd further contests that the AG also does not mention that in *BPI II*, the Commission initially found that ComEd should flow the EDIT through using ARAM, as the Commission used last year and the year before, but then changed course without a detailed explanation and ordered ComEd to flow the EDIT through over a shorter, three-year period. *Compare Sixth Interim Order* at *74 *with Commonwealth Edison Co*., Docket Nos. 87-0427, et al. (Cons.), 1991 WL 11692296 (Mar. 8, 1991) at 192 ("*Remand Order*"). ComEd also points out that the AG does not discuss the fact that the dollar value of the EDIT at issue in those cases was a much smaller magnitude – involving a proposed $147 million adjustment – and does not appear to have been as thoroughly litigated or analyzed in that case. *See Remand Order* at 192.

ComEd avers that in any event, the AG has not put any facts in evidence to show that there is any similarity between the accounting treatment that ComEd used in *BPI II* and what ComEd uses now with the formula rate mechanism in place. That may be impossible to determine according to ComEd, and ComEd argues that certainly cannot be done at the briefing stage. And, bringing this full circle, ComEd contends, the facts in evidence show the opposite: that ComEd has not charged more for deferred taxes than it will pay to the federal government. To the extent a court found that other companies – or even ComEd in the 1980s – did something different, ComEd argues that is irrelevant. ComEd further argues that the AG's reliance on *City of Alton v. Ill. Commerce Comm'n*, 19 Ill. 2d 76 (1960), which was decided before formula ratemaking, is thus similarly misplaced.

(x) The AG's Section 16-108.5(c)(4)(F) Argument is Still Ill-Founded

ComEd explains that although first raised in ComEd's 2018 FRU, the AG rehashes this Section 16-108.5(c)(4)(F) argument here. ComEd further explains that in that case, the AG took the position that EDIT was subject to a *mandatory* 5-year amortization period under the provision of the PUA dealing with the amortization of large, one-time costs, Section 16-108.5(c)(4)(F). *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 46-47 (Dec. 4, 2018); AG Ex. 1.0 at 14-15. ComEd pointed out that this assertion was incorrect, and that AG witness Brosch had indicated as much in a prior proceeding. *Commonwealth Edison Co.,* Docket No. 18-0808, Order at 46 (Dec. 4, 2018). ComEd explains that in prior cases, Mr. Brosch's testimony agreed that tax savings resulting from tax rate changes "are permanent and ongoing expense savings and are not abnormal or non-recurring in nature." *Commonwealth Edison Co.*, Docket No. 18-0808, ComEd Ex. 12.02; *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 12-0293, Order at 91-92 (Dec. 5, 2012); AG/AARP Ex. 3.0 at 32. ComEd argues that Mr. Brosch had also agreed that such savings are not comparable to the type of "large and unusual storm restoration or one-time severance events that are routinely deferred and normalized" under Section 16-108.5(c)(4)(F), "for ratemaking purposes." *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 46 (Dec. 4, 2018); *Ameren Illinois Co. d/b/a Ameren Ill.*, Docket No. 12-0293; AG/AARP Ex. 3.0 at 32. ComEd explains that the AG thereafter abandoned that argument in Docket No. 18-0808 and did not raise it in Docket No. 19-0387. ComEd further explains that CUB subsequently adopted the AG's Section 16-108.5(c)(4)(F) position, but the Commission rejected the argument. *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 57-58 (Dec. 4, 2018).

According to ComEd, now, without any testimonial support, the AG resurrects this argument, but it remains unsupported and incorrect. As ComEd explained in Docket No, 18-0808, Section 16-108.5(c)(4)(F) provides that certain large, non-recurring expenses in a given year are not fully recovered in that year, but are spread out over a 5-year period to smooth out the rate impact over that period rather than have customers pay for that large expense in a single year. *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 46 (Dec. 4, 2018). ComEd contends that it does not apply here, because while the remeasurement of ADIT that creates the EDIT is a one-time event, the state and federal tax rate changes in question are not one-time events, but will be applied every year and will continue to affect ComEd's ADIT, among other things, until and unless Congress or the General Assembly changes the tax rates again. *See* ComEd Ex. 13.08.

Moreover, as ComEd has also explained, applying the 5-year amortization provided for by Section 16-108.5(c)(4)(F) to the EDIT at issue would frustrate the policy objective of that section, which is rate stability. ComEd argues that the shorter amortization period would, the evidence shows, increase rate volatility, not moderate it. To wit, ComEd further argues, applying the AG's position would ironically only require the Commission to apply the 5-year amortization provided for by Section 16-108.5(c)(4)(F) of the Act to the largest EDIT amounts – those that meet the threshold amount specified in Section 16-108.5(c)(4)(F), for ComEd $10 million or more. ComEd explains this means that, instead of smoothing out rates by amortizing larger amounts over longer periods of time, the AG's application of Section 16-108.5(c)(4)(F) would increase rate volatility, amortizing the larger amounts over shorter periods of time and the smaller amounts over longer periods of time. According to ComEd, the Commission should again reject this argument.

(xi) The AG Conflates Return on Investment with EDIT Amortization and Thereby Advocates Intergenerational Inequity

Lastly, ComEd explains that the AG also claims that a five-year amortization period will benefit customers because "ComEd plant is more expensive to consumers in early years, before the unamortized balance on which consumers pay a return is reduced due to depreciation." AG Init. Br. at 47. According to ComEd, the AG is arguing that because the rate impact of each asset – when viewed in isolation from the rest of plant – is highest when it is first put into service and not yet amortized or depreciated, EDIT should be passed through to customers sooner (over five years) rather than later (over the life of the asset), so as to offset that higher initial rate base impact. *Id*. ComEd avers that this argument is misplaced and incorrect for two reasons.

First, ComEd states that the AG's argument ignores the fact that whereas there is only one balance of EDIT related to the TCJA and no new EDIT will arise to further reduce rate base unless there is another change in the federal or state income tax rate, ComEd's plant additions are ongoing investments, occurring on an annual basis. Thus, ComEd explains, when viewed in relation to total rate base as opposed to just one hypothetical asset, accelerating the flow through of EDIT has the opposite effect compared to what the AG intends to accomplish. Instead of ensuring that "all consumers benefit" by offsetting "the high capital costs consumers pay in the early years" (AG Init. Br. at 47), ComEd explains that it will leave customers in the future – in the later years of the hypothetical asset's life – with an increased revenue requirement effect of the cost of capital on total undepreciated plant, with no remaining EDIT benefit to offset the greater return on equity on the higher total plant in service. ComEd Reply Br. at 13.

ComEd contends that this dovetails into a point that ComEd has repeatedly explained: to treat the benefits of the lower tax rate and the funding of the underlying asset through depreciation incongruously (in this case, returning the tax benefits over five years, while the payment of the underlying asset is spread over 39.5 years, approximately

37.5 of which remain) would provide all of the tax benefit to customers in the first five years, leaving nothing for the customers who are still funding the related assets in the later years. Thus, according to ComEd, the AG's recommendation is less equitable to customers than ComEd's approach. ComEd argues that the AG's recommendation provides an immediate payment of disproportionate benefits to current customers and unfairly penalizes future customers who continue to fund long-lived utility assets over their remaining useful lives. ComEd Ex. 13.0 at 8-9.

Second, ComEd asserts, the AG is really discussing the declining net book value of a hypothetical asset: the asset's original book value less accumulated depreciation, which is the amount ComEd earns a return on. But that issue – depreciation and return on equity – is not in dispute in this case and is fundamentally unrelated to the EDIT issue that is disputed, which involves depreciation and related deferred taxes, not return on equity. Indeed, as ComEd contests, in attempting to relate these two different issues, all the AG is really doing is arguing that the Commission should utilize any possible way to decrease costs to customers in the present, without regard for the impact on customers in the future. ComEd contends that is the antithesis of proper and balanced ratemaking and is itself arbitrary and capricious. ComEd states that although both return on equity and EDIT are impacted by and related to depreciation, respectively, they are not the same and should not be conflated.

b. Staff's Position

Staff states that the Commission should reject the AG's proposal to amortize unprotected plant-related EDIT over a five-year period rather than using ARAM, as has been the Commission's practice. Staff witness Trost did not address EDIT in her direct testimony, as she did not take issue with ComEd's proposed amortization period; therefore, she did not propose an EDIT adjustment for ComEd. The Company's proposal of 39.5 years is essentially the same amortization period for EDIT that the Commission approved in the Company's prior two formula rate cases. AG witness Selvaggio noted the AG appealed the decision in Docket No. 19-0387 and states that if the decision is overturned, the shorter refund period should be included in the determination of the net revenue requirement in this proceeding.

The Commission's prior conclusion in Docket No. 19-0387 directly contradicts the AG's argument. Staff Ex. 6.0 at 5. Also, while Staff recognizes that Commission decisions do not have the effect of *res judicata* (*Lakehead Pipeline Co. v. Ill. Commerce Comm'n*, 296 App.3d 942, 956 (1998)), Commission decisions are entitled to less deference when the Commission drastically departs from past practice with no reasoned basis. *Bus. & Prof'l People for the Pub. Interest v. Ill. Commerce Comm'n*, 136 Ill.2d 192, 228 (1989). Here, adoption of the AG's position would be a drastic departure from the Commission decisions reached two years in a row.

In direct testimony, the AG did not present any previously unconsidered or new facts to support its position above, which is directly contrary to the Commission's prior two conclusions. ComEd Ex. 8.09; Staff Ex. 6.0 at 4-5. The AG states that the Commission should consider the COVID-19 pandemic as a reason to revisit the EDIT amortization issue. AG Ex. 3.0 at 12. As ComEd points out, the Commission and the parties – including both ComEd and the AG – have already taken steps to address the

COVID-19 pandemic and its impact on customers. ComEd Ex. 13.0 at 6; *see* Docket No. 20-0309, Final Order (Jun. 18, 2020); *see also* Docket No. 20-0309, Staff's Unopposed Motion for Entry of an Order Approving and Adopting Stipulation Resolving All Issues between Various Parties and Exhibit A (Stipulation) (Jun. 10, 2020).

The facts of this case are no different than the facts in Docket Nos. 18-0808 and 19-0387. The ARAM method that the Commission previously approved resulted in just and reasonable rates. Using ARAM to determine the life of the EDIT amortization period properly considers the actual remaining useful lives in determining the amortization period. This is consistent with cost of service ratemaking principles which attempt to create the proper allocation of annual costs to the ratepayers using the utility service during each annual period. The ARAM method avoids shifting of costs from ratepayers in early years of the property life to ratepayers in later years of property life. Staff Ex. 6.0 at 6.

c. AG's Position

The AG requests that the Commission reverse its decision from last year and order ComEd to return EDIT to consumers over five, rather than 39.5 years. The question of whether the Commission abused its discretion in the ComEd 2019 FRU on EDIT return is currently before the Illinois Appellate Court. Should the court reverse and remand the Commission's prior EDIT decision, the Commission will be obligated to adopt the same decision in this docket, provided a decision is reached before the end of the rehearing period under Section 10-113 of the Act. AG Ex. 1.0 at 8.

The legal and factual bases for a five-year refund of EDIT are the same as those presented in the ComEd 2019 FRU, with the additional imperative that Illinois residents are now facing the financial and other dislocations and hardships of the COVID-19 pandemic. AG Ex. 1.0 at 7-8; AG Ex. 3.0 at 9-12. Consumers faced with unemployment, reduced or no income, and additional responsibilities due to school closures and other restrictions could benefit from the rate reduction that refunding the EDIT over five year would provide. Refunding the EDIT to consumers over five years increases the 2019 amortization of EDIT by $48.25 million and reduces the ADIT balance at December 31, 2019, by $48.25 million. This results in a $135.840 million reduction in the net revenue requirement. AG Ex. 3.0 at 12-13.

The AG asserts that while customers will pay for plant over time – including both the return of the plant investment through depreciation and the return to investors on the undepreciated balance – the payment of excess deferred taxes occurred in the years *before* 2018 when the federal tax rate was changed. Customers will pay the associated federal deferred taxes over the life of the plant, but those taxes are due at the new, 21% tax rate, creating the "excess" that is at issue. While consumers pay for plant over its useful life, EDIT was created by the change in the federal tax rate and paid by pre-2018 customers. The AG maintains that it is unreasonable to postpone the refund of those funds for 39.5 years while the tax that is actually due under current law reverses.

ComEd argues that it is fairer for it to hold on to EDIT until the underlying plant depreciates and the deferred tax "reverses." *Id*. at 49-50. The AG states that this argument is based on ComEd's companion argument that consumers have not prepaid deferred taxes. While ComEd presents three tables that purport to show the accounting for taxes and deferred taxes, all they show is that ComEd credits the amount it pays for deferred taxes against currently due taxes. ComEd fails to acknowledge that deferred taxes are a credit against current taxes because the money to pay those deferrals has already been collected in prior years when they were incurred based on regulatory (not tax) accounting and are being held as ADIT.

The AG cites to *BPI II*, in which the Court affirmed a Commission decision to refund EDIT created by the 1983 federal income tax cut over three years. *BPI II* at 258-59. That Court said: "The excess ADIT represents money Edison has already collected from ratepayers to cover future income tax expenses which the company will not incur. The AG agrees with the Commission that it is fair and reasonable to return these excess ADITs to the ratepayers who actually paid this money to the company." *Id.* The AG maintains that ComEd's attempt to contradict this basic regulatory principle should be rejected, and the EDIT should be returned to consumers promptly, like it was after the last major federal tax cut in 1983. As the *BPI II* Court said, the best way to return excess ADIT to those who actually paid this money to the company is to amortize the amount over a relatively short time, in this instance five rather than three years. As the Court noted, a Commission finding to return EDIT over five year is "fair and reasonable as well as supported by the evidence and sound reasoning." *Id*. at 259.

The AG also cites Section 16-108.5(c)(4)(F) of the Act that provides that a formula rate utility that has a charge or credit that exceeds $10 million due to a change in law, "including those relating to taxes," shall amortize that charge or credit over five years and include the unamortized balance in rate base. 220 ILCS 5/16-108.5(c)(4)(F). Due to the change in tax law effective January 1, 2018, consumers became entitled to a refund of unprotected property related EDIT. *Commonwealth Edison Co.*, Docket No. 19-0387, Order at 37 (Dec. 4, 2019). The unprotected property related EDIT for ComEd equaled $341.5 million for 2019, clearly exceeding $10 million. AG Ex. 3.1, Sch. 2. The AG points out that under the formula rate law, this change in the law relating to taxes resulted in a credit that should be amortized over five years pursuant to Section 16-108.5(c)(4)(F). 220 ILCS 5/16-108.5(c)(4)(F).

The AG further states that returning the tax overpayments over five years provides a better match between customers who paid ComEd's income tax expense in the years before 2018, and the customers who will receive the credit. AG Ex.3.0 at 10; AG Ex. 3.3. A five-year period is appropriate and fair to consumers because it is more likely to match the refund to the customers who paid the higher tax rate and a five-year amortization would create a current, meaningful consumer benefit compared to the long amortization which stretches the refund over so many years that consumers cannot be expected to notice the benefit. Finally, the AG shows that ComEd plant is more expensive to consumers in early years, before the unamortized balance on which consumers pay a return is reduced due to depreciation, which means that all consumers benefit when EDIT is returned in the early years of a plant's life. The EDIT return would offset the high capital costs consumers pay in the early years. AG Ex. at 11-12; AG Ex. 3.3 at 26-29.

Like all ADIT, EDIT is held by the utility and treated as ratepayer supplied capital pursuant to well-established regulatory accounting and law. *BPI II* at 258-59; *City of Alton v. Ill. Commerce Comm'n,* 19 Ill.2d at 91; *Ameren Ill. Co. d/b/a Ameren Ill. v. Ill. Commerce*

Comm'n, 2013 IL App. (4th) 121008, ¶34 (modified upon denial of rehearing); *CILCO v. Ill. Commerce Comm'n,* 252 Ill. App. 3d 577, 583, 624 (3d Dist. 1993).

The AG concludes that adopting a five-year amortization period to return unprotected EDIT to consumers is required by Section 16-108.5(c)(4)(F) of the Act, increases the 2019 amortization of EDIT by $48.25 million, reduces the ADIT balance at December 31, 2019, by $48.25 million, and results in a $135.840 million reduction in the net revenue requirement. AG Ex. 3.0 at 12-13; AG Ex. 3.1, Sch. 2.

d. Commission Analysis and Conclusion

The AG again urges the Commission to reject the ARAM method for determining the EDIT amortization period. Utilizing the ARAM method means that customers pay over 39.5 years for the assets that give rise to the deferred taxes and receive the benefit of a lower tax rate. Instead, the AG relies on the same arguments from the last two years to encourage the Commission to depart from its reasoning rejecting the AG's five-year amortization period proposal. As the Commission stated in Docket No. 19-0387, "an amortization period for unprotected property-related EDIT that is calculated using ARAM aligns the amortization of EDIT with the underlying assets and is reasonable and equitable." *Commonwealth Edison Co,* Docket No. 19-0387, Final Order at 37 (Dec. 4, 2019). Though the AG has appealed its decision relating to EDIT in Docket No. 19-0387, the Commission is comfortable with its prior reasoning and notes that facts surrounding EDIT have not changed in any material way which would result in a departure from its prior decisions. *See Bus. & Prof'l People*, 136 Ill.2d at 228 (1989).

The Commission will not rehash the same arguments about whether any amount is "due" customers, as the AG claims and Staff and ComEd dispute. The Commission will, however, respond to the AG's new arguments about COVID-19 and Section 16-108.5(c)(4)(F). As to the pandemic, the Commission agrees with ComEd and Staff that the COVID-19 pandemic is being addressed in a different docket, *Ill. Commerce Comm'n on Its Own Motion,* Docket No. 20-0309, Order (Jun. 18, 2020), and pertains to disconnections and credit and collection procedures. There is no justification to "refund" customers arbitrarily for EDIT in this docket simply because there is economic hardship among ratepayers related to the pandemic. It makes more sense to address ratepayers' direct needs through a disconnection moratorium for low-income customers and extended deferred payment arrangements for customers, as Docket No. 20-0309 attempts to do.

The Commission agrees with ComEd that Section 16-108.5(c)(4)(F) is not relevant to EDIT. This Section of the Act addresses large, non-recurring costs such as a change in accounting rules, change in law, or a single storm or similar expense. As ComEd notes, the AG agrees with ComEd's position: tax savings resulting from tax rate changes "are permanent and ongoing expense savings and are not abnormal or non-recurring in nature." *Commonwealth Edison Co.*, Docket No. 18-0808, ComEd Ex. 12.02; *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 12-0293, Order at 91-92 (Dec. 5, 2012); AG/AARP Ex. 3.0 at 32. The AG also agreed that such savings are not comparable to the type of "large and unusual storm restoration or one-time severance events that are routinely deferred and normalized" under Section 16-108.5(c)(4)(F), "for ratemaking purposes." *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 46 (Dec. 4, 2018). Therefore, the Commission will continue to approve ComEd's rate base determinations related to EDIT.

3. Updated Depreciation Rates

a. ComEd's Position

ComEd states that the parties generally agree as to the purpose of depreciation studies, and the impact of depreciation on utilities' assets and, in turn, their rates. Further, ComEd notes that the parties agree as to the depreciation rates to be applied to the assets in many of ComEd's accounts. However, the AG and IIEC/CUB each recommend that the Commission adopt a depreciation analysis that results in depreciation rates, and depreciation expense, which depart from those used to calculate ComEd's revenue requirement in this case. ComEd notes that, while the AG and IIEC/CUB each present their own alternative depreciation rates, each party asserts that they would accept the other's adjustments if their own recommendations are rejected. Thus, ComEd states, the Commission is left with three competing depreciation studies, and three competing sets of depreciation rates, from which to choose. Neither the AG nor IIEC/CUB witness addressed the other's testimony, so the basis of their apparent disagreement is not obvious from the record. ComEd explains that, of the 15 total accounts for which the AG and IIEC/CUB witnesses recommend changes, the witnesses disagreed among themselves as to whether changes were appropriate with respect to 11 accounts. In addition, for the four accounts that both the AG and IIEC/CUB witnesses propose a change, they do not propose the same change.

(i) Overview of Depreciation Rates

ComEd states that depreciation, in broad terms, represents the loss in value that occurs in connection with the consumption of utility plant in the course of service, via wear and tear, deterioration, action of the elements, inadequacy, obsolescence, changes in demand, or the requirements of public authorities. ComEd explains that the rate of depreciation applied to a capital asset or group of assets dictates the timing of the utility's recovery of the costs of the capital asset and its related removal costs, if any, and the corresponding timing of the reduction of value of the asset included in rate base. From an accounting perspective, depreciation is a method of distributing the cost of the capital asset, less any net salvage value, over a period of time by allocating annual amounts to expense. ComEd notes that each annual amount of depreciation expense is part of that year's total cost of providing utility service.

ComEd states that the most prevalent method of depreciating assets distributes an equal amount of the cost of the asset to each year of its service life, and that this method is known as the straight-line method of depreciation. The service life of an asset is based on the type and age of the asset. Therefore, ComEd explains, the depreciation rate applicable to a pool or group of assets will be based on the nature and age of the assets in that group. ComEd states that, as new assets enter service and older assets are retired, the aggregate service lives associated with the collection of ComEd's capital assets in rate base is constantly changing. ComEd explains that depreciation rates are updated to reflect these and other changes, and to ensure that the depreciation expense and rate base included in rates is charged to the generation of customers who receive service from the related capital investment.

In ComEd's 2007 rate case, the Commission found that it is reasonable for ComEd to conduct depreciation studies every five years and use the results of those studies to update ComEd's depreciation rates. *Commonwealth Edison Co.*, Docket No. 07-0566, Order at 235 (Sep. 10, 2008). Since that time, ComEd has accordingly performed depreciation studies in 2008, 2013, and 2018, and updated its depreciation rates in accordance with the results of those studies in January 2009, January 2014, and January 2019.

Following the practice used in each recent prior update of depreciation rates, ComEd states, an independent third-party depreciation expert conducted a study of ComEd's depreciation rates. That expert, Gannett Fleming, worked with ComEd subject matter experts to review plant records, inspect plant in the field, and develop an understanding of the actual characteristics and details of ComEd's plant, including the mix of assets, their function and nature, any special characteristics that might impact their removal or salvage cost, and their forecasted service lives. In 2018, Gannett Fleming met over a period of six days with experts in seven ComEd departments, including Distribution, Transmission and Substation, Fleet, Meters and Smart Grid, Real Estate and Facilities, Tools and Supply, and IT and Communications. After this collaborative process, ComEd explains, Gannett Fleming assessed the data, applied their expertise and judgment, as well as widely accepted methods for estimating depreciation, and delivered to ComEd a study that included recommended updated depreciation rates.

ComEd states the independent public accountants Pricewaterhouse Coopers ("PwC") then examined the updated depreciation rates that resulted from Gannett Fleming's study, and found the updated rates to be fairly stated. PwC reviewed the process by which ComEd provided data to Gannett Fleming, performed a tie-out to underlying plant data to confirm the accuracy of the data used in the study, tested the accuracy of the calculations used in the study, reviewed ComEd's accounting policies to determine whether they are in accordance with generally accepted accounting principles, reviewed Gannett Fleming's methodology and assumptions, and analyzed the updated depreciation rates to understand the reasons for any changes from prior rates.

Next, ComEd states it filed with the Commission a statement setting forth the updated depreciation rates that resulted from the study, in accordance with Section 5-104(c) of the Act. 220 ILCS 5/5- 104(c). Section 5-104 provides that an "electric public utility may from time to time alter the annual rates of depreciation" applied to its assets, and prescribes the following process:

> The electric public utility shall file a statement with the Commission which shall set forth the new rates of depreciation and which shall contain a certification by an independent certified public accountant that the new rates of depreciation are consistent with generally accepted accounting principles. Upon the filing of such statement, the new rates of depreciation shall be deemed to be approved by the Commission as the rates of depreciation to be applied thereafter by the public utility as though an order had been entered.

220 ILCS 5/5-104(c). ComEd states that it submitted the requisite statement to the Commission on January 23, 2019 and included a certification of PwC that the rates are consistent with accounting standards.

ComEd asserts that, upon the filing of that statement, the updated depreciation rates are "deemed approved by the Commission … as though an order had been entered." 220 ILCS 5/5-104(c). Therefore, ComEd utilized the updated depreciation rates in preparing the information presented in its 2019 FRU proceeding, and the Commission approved a revenue requirement that incorporates the depreciation expense calculation using the updated depreciation rates. *See Commonwealth Edison Co.*, Docket No. 19-0387, Order at 11 (Dec. 4, 2019). ComEd states it relied upon the same updated depreciation rates in preparing the revenue requirements proposed in this proceeding.

(ii) ComEd's Depreciation Rates Should be Used in Calculating Updated Delivery Services Rates

ComEd states that its depreciation rates are the result of a comprehensive analysis conducted by an independent third party and have been verified as consistent with accounting standards after review by a second independent third-party. ComEd notes that they were submitted to the Commission in accordance with the Act and were deemed approved by operation of law. ComEd concludes the depreciation rates have been appropriately applied in this case, and the resulting depreciation expense is accurately calculated.

Although witnesses on behalf of AG and IIEC/CUB contend that the depreciation rates applied to certain accounts should be adjusted, ComEd asserts that neither witness argued that ComEd's process for studying and updating its depreciation rates was incomplete or in error. ComEd also notes that neither witness disputes that the depreciation rates resulting from ComEd's depreciation study were independently reviewed and deemed approved under law. ComEd maintains their arguments offer no basis on which to reject ComEd's thorough study.

ComEd states that the disagreement among the parties centers on the degree to which a depreciation study should incorporate subject-matter experts' expectations for the future, or conversely, the degree to which strict adherence to historical data is appropriate. ComEd notes that ComEd witnesses Kennedy and Tyschenko responded in great detail, on an account by account basis, to the AG and IIEC/CUB recommendations. *See* ComEd Ex. 12.0 at 12-51; ComEd Ex. 17.0 at 2-9; ComEd Ex. 10.0 at 3-16; ComEd Ex. 15.0 at 1-4. But, ComEd states, the differing approaches and characteristics warrant emphasis.

ComEd points out that the AG repeatedly characterizes its witness's methodology of fitting historical data to Iowa curves as "objective, unbiased, and comprehensive" and faults data gathered from interviews with ComEd subject-matter experts as "unsubstantiated, subjective expectations." *See, e.g.,* AG Init. Br. at 31-32 (asserting the AG witness's "mathematical curve-fitting process … objectively determined" the estimated service life, while ComEd's subject-matter expert's experience is "unsubstantiated [and] subjective"). But, ComEd maintains that is not the case. ComEd explains that the AG chooses to focus exclusively on these backward-looking and mechanistic calculations and would rely exclusively on data concerning the rate at which assets have retired in the past, giving no weight at all to expectations about the future supported by the record. ComEd maintains that this is not an objective, unbiased, or comprehensive choice by the AG. On the other hand, IIEC/CUB recognizes that information about expectations for the future should be used in conjunction with mathematical analysis of historical data and notes that its witness did indeed rely on information about the future, in addition to data about the past. Thus, ComEd states the difference between IIEC/CUB's approach and ComEd's approach appears to be the degree to which those future expectations should inform the results of the depreciation study.

ComEd maintains that expectations of subject-matter experts are a critical component of a representative depreciation study. The purpose of a depreciation study is to estimate the rate at which existing assets – those currently in service – will depreciate. Thus, ComEd explains, the estimated service lives and net salvage values used to calculate depreciation rates are inherently forecasts of the future. Information about past experience can certainly inform expectations for the future, but historical data alone will never precisely predict the future. For example, ComEd states that advancements in technology, compliance with changes in law, changes in load and system capacity, and ComEd's proactive efforts to inspect its facilities have informed ComEd's expectations about the useful lives of the assets currently in service. But ComEd notes that those factors are simply not reflected in historical data. ComEd states that both the AG and IIEC/CUB cite the case *Lindheimer v. Illinois Bell Telephone Company* for the proposition that a utility must show its depreciation rates are not "excessive," but both parties ignore the fact that the Court accepted as persuasive information about the actual condition of the property at the time of the study. *Lindheimer v. Ill. Bell Tel. Co.,* 292 U.S. 151, 172 (1934). ComEd asserts that, because the AG's depreciation analysis completely ignores this critical information, the Commission should reject it entirely. ComEd states that a depreciation study like the AG's that ignores a relevant source of information is not "objective," it is based on a subjective determination that historical data alone is more representative of the future than the combination of historical data and experts' expectations.

ComEd maintains that, although the IIEC/CUB depreciation study incorporates both historical data and information obtained from subject-matter experts, it too should be rejected in favor of ComEd's depreciation study. ComEd explains that the ComEd depreciation study incorporates longer service life estimates than previous studies but reflects movement at a level commensurate with a measured change in expected lives. ComEd notes that IIEC/CUB proposes to modify the lives of assets for eight accounts – accounts that comprise a significant portion of ComEd's overall asset base – even more rapidly, without addressing the significance of its changes in relation to prior depreciation rates. ComEd asserts that depreciation rates should be representative of the assets to which they are applied, and because the overall body of utility assets changes only slowly and incrementally, depreciation rates should change gradually.

Moreover, ComEd points out that the IIEC/CUB and AG proposals are unbalanced – every one of their modifications extend even further the service life estimate. In not one case did IIEC/CUB or the AG recommend an estimated service life shorter than that used in ComEd's depreciation study. Had the IIEC/CUB or AG witnesses applied the same considerations that they applied to reach results that tend to decrease ComEd's annual depreciation expense for the 15 individual accounts addressed in their testimony consistently to all of ComEd's accounts, ComEd asserts those considerations would have resulted in changes to other accounts that would tend to increase annual depreciation expense. In other words, IIEC/CUB and the AG simply chose to recommend no change where their methodology would have increased the depreciation expense attributable to an account. ComEd states that this lack of consistency reveals a results-oriented approach and is a departure from past Commission-accepted ComEd depreciation studies.

For all of these reasons, ComEd concludes that the Commission should use the results of ComEd's depreciation study to calculate the revenue requirement in this proceeding and should reject proposals to alter the depreciation rates on a going-forward basis. ComEd's depreciation study was comprehensive and utilized a consistent methodology and was based on the best available data concerning ComEd's assets, including the knowledge of ComEd subject matter experts. It was prepared in accordance with industry practice and expertise, and the study was reviewed by independent public accountants. And it was presented and "deemed approved" in accordance with the PUA.

b. AG's Position

In the last FRU, ComEd introduced updated depreciation rates applicable only to 2019 projected plant. In this docket, the updated rates will be applied to the entire plant balance, including 2020 projected plant, and all future plant additions moving forward. In connection with the depreciation study on which the new depreciation rates were based, ComEd, the AG, and IIEC/CUB, entered a stipulation allowing interested parties to analyze, and if merited, challenge the Company's updated depreciation study and resulting depreciation rates in this proceeding. *Commonwealth Edison Co.,* Docket No. 19-0387, Order at 10 (Dec. 4, 2019). The quinquennial study was finalized in January of 2019. The AG engaged David, J. Garrett, depreciation expert and managing member of Resolve Utility Consulting, PLLC, to conduct a thorough analysis of the Gannett Fleming study using the same data and depreciation system employed by Gannett Fleming. IIEC/CUB's depreciation expert, Brian C. Andrews of Brubaker and Associates, Inc., also reviewed the ComEd depreciation study.

AG witness Garrett used the Company's own historical data and mathematical curve-fitting process and found that the Company's proposed service lives for several of its mass property accounts are unreasonably short, resulting in unreasonably high depreciation rates. AG Ex. 2.0 at 4. Mr. Garrett's rate adjustments reduce the Company's depreciation accrual by approximately $59 million – applied to plant balances at December 31, 2017, and a $2.101 million reduction to the net revenue requirement in this proceeding. AG Ex. 1.0 at 25.

The AG asks the Commission to apply Mr. Garrett's adjustments to ComEd's 2020 Projected Plant balance, which will be included in rates beginning January 1, 2021. This will also allow the Company to include the adjusted rates in its FERC Form 1 for calendar year 2020, filed in April of 2021. With respect to accounts for which the AG and IIEC/CUB independently propose rate adjustments, should the Commission not adopt the AG's proposed rates, the AG would support those rates proposed by IIEC/CUB. The AG's silence as to any of ComEd's other proposed depreciation rates should not be construed as an endorsement of those rates.

The AG emphasizes that it is well established that "[t]he Company has the burden of making a convincing showing that the amounts it has charged to operating expenses for depreciation have not been excessive." *Lindheimer,* 292 U.S. at 169; *see also* 220 ILCS 5/9-201(c). The AG presented background that deprecation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. *Lindheimer*, 292 U.S. at 167. These factors embrace wear and tear, decay, inadequacy, and obsolescence. *Id.* This standard was reaffirmed by the Court in *Fed. Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 591 (1944) ("*Hope")*. The *Hope* Court, citing *Lindheimer*, recognized the propriety of basing annual deprecation on cost, stating "By such a procedure, the utility is made whole and the integrity of its investment maintained. No more is required." *Id.* at 606.

Consequently, "depreciation accounting is a system of accounting that aims to distribute cost or other basic value of tangible capital assets, less salvage (if any), over the *estimated useful life* of the unit (which may be a group of assets) in a systematic and rational manner." AG Ex. 2.0 at 6, *citing* American Institute of Accountants, *Accounting Terminology Bulletins Number 1: Review and Résumé 25*, 1953) (emphasis added). It is the process of allocation, not of valuation. *Id*.; *see also* IIEC/CUB Ex. 1 at 5 (citing Edison Electric Institute, *Introduction to Depreciation for Public Utilities and other Industries*, April 2013). Utilities subject to cost of service regulation recover this loss of value as an expense in their rates, which allows them to recover the cost of their asset or group of assets over the expected life of the asset or asset group. ComEd Ex. 11.0 at 3. The rate of depreciation applied to a capital asset or group of assets, therefore, determines how quickly the utility recovers the cost from ratepayers. *See id*.

The AG emphasizes that the legal standards noted above do not mandate a specific system for conducting a depreciation analysis. Further, the AG and IIEC/CUB utilized the same data and depreciation system used by the Company, which is also the system most used by depreciation analysts in regulatory proceedings. ComEd Ex. 12.0 at 7; AG Ex. 2.0 at 8; IIEC/CUB Ex. 1.0 at 7. There is no dispute with respect to the methodologies used by Gannett Fleming to gather the data used in the deprecation study, nor the sufficiency of the data collected.

While all parties utilized the same basic data, the AG showed that the Company defended its inaccurately short service lives on assertions of asset life and unsupported, subjective information obtained from field visits and personnel discussions rather than utilizing the Company's own, substantial, historical data. The AG argues that this practice runs contrary to the principles and application of a service life analysis where substantial historical data is available. *Id.*; IIEC/CUB Ex. 1.0 at 10.

The AG states that ComEd witness Tyschenko, who is not a depreciation expert, made unsupported assertions about asset life and ignored the historical service life data maintained by the Company, which for account 353 – Station Equipment alone contains over 30,000 data points of additions, retirements, and transfers, including installations dating back to 1898. AG Ex. 4.0 at 11. By contrast, AG witness Garrett testified that he used original property data, including additions, retirements, transfers, and other transactions, organized by vintage and transaction year to ultimately develop an observed life table or ("OLT"). The OLT, or Survivor Curve, was then fitted and smoothed with a complete curve – a selected Iowa Curve – to determine the ultimate average life of the group. *Id*.

Mr. Garrett selected the best fitting Iowa Curve for each account he analyzed by first visually inspecting the OLT Curve, which records actual data, and then, using a mathematical curve-fitting technique, measuring the distance between the OLT Curve and the selected Iowa Curve to get an objective, mathematical assessment of how well the Iowa Curve matches the OLT Curve. *Id.* at 10. The distance between the curves was calculated using the sum-of squared differences ("SSD") technique. *Id*. at 12. He used this process to minimize the SSD measurement between the curves to ensure that the most reasonable Iowa Curve was selected given all the available data. *Id*.; AG Ex. 4.0 at 7.

AG witness Garrett conducted further analysis to recognize the effect where some units last significantly longer than the average, and there is a long tail where the data flattens out. His analysis recognized that data points at the tail end of the OLT Curve that represent only 1% of the plant with significantly longer life, should not be given equal statistical weight because the dollars associated with those data points are insignificant. *Id*. at 13. Mr. Garrett enhanced the accuracy of the selected Iowa Curve, by disregarding outlier data which would otherwise skew the curve and falsely indicate that a longer Iowa Curve is needed. The AG included several figures showing the matching of Iowa Curves to ComEd's historical data to demonstrate the accuracy of Mr. Garrett's recommendations. The AG included the curves for Account 362 – Distribution Station Equipment – Truncated; Account 397 – Communication Equipment; Supervisor Control and Data Acquisition ("SCADA") in their Initial Brief, but curves for all accounts are included in AG Exhibit 4.0.

The AG points out that Mr. Garrett's mathematical curve-fitting analysis was applied to all but one account in Account 368 – Line Transformers. For this account, unlike the other accounts, the Company did not provide any historical data, or OLT, to support its proposed service life of 35 years, which equates to a proposed annual accrual of $36.2 million. ComEd Ex. 1.13 at 55; AG Ex. 2.0 at 28. The burden is on the Company to justify that its rates are not excessive, but the AG argues that ComEd failed to provide any evidence on the life of transformers – a major piece of equipment in ComEd's plant. Mr. Garrett provides an objectively more reasonable estimate of 43 years for transformers based on rates approved in other jurisdictions. AG Ex. 2.0 at 30.

ComEd sought a 35-year life for transformers, rather than the 43-year life that is consistent with other utility experience. The AG notes that ComEd argued that Mr. Garrett "failed to consider the information learned through the interview process . . . which indicate causes of retirements that would apply to ComEd but may not apply to the peer group," ComEd Ex. 26, and that the only evidence proffered by the Company in support of its abbreviated 35-year service life recommendation are: (1) three documents in the depreciation study that merely conclude that the service life for its transformers is SQ-35 (ComEd Ex. 1.13 at 55); and (2) a single, loose-leaf page of hand-written notes listing a few types of transformers and related characteristics, a few factors that could serve as reasons for transformer retirement, and a note written along the left margin that claims

"35 yr. life is reasonable." ComEd Ex. 12.02 at 26. The AG points out that absent from the alleged "information learned through the interview process" is any type of meaningful data or analysis demonstrating that the Company, in fact, is experiencing the factors noted and to what extent it is experiencing them. Without such information, the AG maintains that the Commission should reject ComEd's unreasonably short life for Line Transformers and adopt the analysis presented by AG witness Garrett and adopt his depreciation adjustments. AG Ex. 2.0, Exh. DJG-4.

The AG responds to ComEd's criticism of Mr. Garrett's conclusions. First, ComEd witness Kennedy admitted that he "relied on the same information that was available to all parties" in this proceeding and acknowledged that he "did not have access to better or different information than any other party." ComEd Ex. 17.0 at 2. Therefore, the question for Commission review is which analyst chose the more appropriate Iowa curve based on the same information.

Second, while ComEd asserted that Mr. Garrett "failed to consider critical information obtained through discussions with utility management during field reviews and conferences," in fact, Mr. Garrett reviewed the field notes, but did not find anything to override the ample historical data provided by the Company. The AG further points out that field inspections involve seeing a very small portion of a utility's assets, typically take place at a generating facility, and do not involve any consequential, physical inspection of the utility's transmission and distribution assets, which often span thousands of miles of territory. AG. Ex. 4.0 at 5. Mr. Garrett used the historical data which are objective, unbiased, and comprehensive, and discounted data inputs that are minimally representative, potentially biased, and entirely subjective.

The AG concludes that while ComEd is requesting a $25 million increase to its annual depreciation accrual based on plant balances at December 31, 2017, it failed to provide evidence demonstrating that this increase is reasonable. To the contrary, the historical data provided by the Company demonstrates that the Company's proposed service lives for several of its mass property accounts are unreasonably short, resulting in unreasonably high depreciation rates. Mr. Garrett's proposed adjustments more accurately reflect the service lives of ComEd's asset pool. AG Ex. 2.0, DJG-4.

The AG's proposed change in depreciation rates reduces the 2020 depreciation expense by $2.232 million and increases rate base by $1.595 million (reduction of the depreciation reserve by $2.232 million offset by an increase in ADIT by $0.636 million). The impact of the proposed change in depreciation rates reduces the net revenue requirement by approximately $2.106 million.

c. IIEC/CUB's Position

IIEC/CUB contends that ComEd proposes excessive depreciation rates based on a 2019 Depreciation Study that relies on several flawed assumptions and arbitrary determinations, all of which serve to inflate depreciation expense beyond what the record in this proceeding can support. IIEC/CUB witness Andrews and AG witness Garrett identify several accounts, each representing a different set of ComEd infrastructure assets, for which they conclude the Company has overstated the rate of depreciation, increasing the depreciation expense ComEd recovers from ratepayers each year. IIEC/CUB requests that the Commission adopt Mr. Andrews' recommended depreciation rates and, where they do not conflict, those proposed by AG witness Garrett. To the extent Mr. Andrews' recommendations differ from Mr. Garrett's, IIEC/CUB supports Mr. Andrews' recommendations with Mr. Garrett's being an acceptable alternative.

IIEC/CUB's depreciation study supports an overall depreciation rate of 2.69% and a depreciation expense of $709.5 million on utility plant balances as of December 31, 2017. IIEC/CUB Ex. 1.0 at 3. Compared to ComEd's 2019 Depreciation Study, ComEd Ex. 1.13, IIEC/CUB's produces a $63.8 million decrease in depreciation expense. IIEC/CUB Ex. 1.0 at 3. IIEC/CUB witness Andrews' proposed depreciation rate, if effective January 1, 2020, reduces the depreciation expense on the projected 2020 plant additions by $3.8 million. *Id.* at 4.

Discussing the legal standards that apply to this proceeding, IIEC/CUB quotes Section 5-104(c) of the Act, which authorizes the Commission to alter the Company's annual depreciation rates "that it applies to its several classes of assets so long as the rates are consistent with generally accepted accounting principles." 220 ILCS 5/5-104(c). The Act does not define "generally accepted accounting principles."

IIEC/CUB cites *Lindheimer v. Illinois Bell Telephone Company* as establishing that depreciation expense is to be determined by applying the corresponding depreciation rate to the original cost of the asset. *Lindheimer,* 292 U.S. at 167. That Court elaborated that a utility "has the burden of making a convincing showing that the amounts it has charged to operating expenses for depreciation have not been excessive. That burden is not sustained by proof that its general accounting system has been correct. The calculations are mathematical, but the predictions underlying them are essentially matters of opinion." *Id.*

IIEC/CUB contends that in exercising its authority to order adjustments to the Company's depreciation expense, no applicable body of law suggests that the Commission should favor the judgment of the utility's depreciation accountants over the other well-qualified depreciation accountants who have testified in this case.

Mr. Andrews, Mr. Garrett, and Gannett Fleming (on behalf of ComEd) all utilized the most common depreciation system—Straight Line Method, Average Life Group Procedure, and Remaining Life Technique—to calculate depreciation rates for each account. However, they determined different depreciation rates for the accounts discussed below. IIEC/CUB notes that each instance of witnesses disagreeing on the proper depreciation rate for an account in this proceeding owes to a different choice of survivor curve, net salvage, or both.

IIEC/CUB argues that ComEd's depreciation expense is excessive and based on overstated depreciation rates. ComEd's rates produce an excessive amount of depreciation expense and thus overstate the 2021 rate year revenue requirement. IIEC/CUB maintains ComEd's 2019 Depreciation Study (ComEd Ex. 1.13) contains several flawed assumptions that result in excessive depreciation rates.

IIEC/CUB maintains that the Company utilized the depreciation rates presented in the 2019 Depreciation Study to calculate the 2019 depreciation expense as reported in the FERC Form 1 and the depreciation expense on the projected 2020 plant additions. IIEC/CUB contends the average service life ("ASL") parameters ComEd is utilizing for depreciation purposes for several accounts should be increased. IIEC/CUB asserts statistical fitting methods indicate survivor curves with longer average service lives represent ComEd's historic retirement data better than what the 2019 ComEd Depreciation Study assumes. IIEC/CUB argues the net salvage rates ComEd is utilizing for several accounts should be decreased in magnitude, such that they are less negative. Mr. Andrews' net salvage analysis supports more moderate net salvage rates for several accounts and thus lower depreciation rates for those accounts.

Mr. Andrews' Depreciation Study (IIEC/CUB Ex. 1.1) supports an overall depreciation rate of 2.69% and a depreciation expense of $709.5 million on utility plant balances as of December 31, 2017. This would represent a decrease of $63.8 million in depreciation expense relative to ComEd's 2019 Depreciation Study. If IIEC/CUB's proposed depreciation rates were effective on January 1, 2020, the depreciation expense on the projected 2020 plant additions would be reduced by $3.8 million. IIEC/CUB Ex. 1.0 at 3-4.

Mr. Andrews performed an actuarial analysis on ComEd's actual property data. This is the National Association of Regulatory Utility Commissioners' preferred method of utility property life analysis and is the same method used by Gannett Fleming on behalf of ComEd. The adjustments to the net salvage rates for accounts also are based on the net salvage data prepared by ComEd. IIEC/CUB's depreciation study supports reduced depreciation rates for 28 of the accounts relative to ComEd's proposal and, as noted above, an overall depreciation rate of 2.69% and a depreciation expense for total utility plant of $709.5 million based on December 12, 2017, plant balances. IIEC/CUB Ex. 1.0 at 16-17.

IIEC/CUB recommends a different survivor curve than ComEd, with a longer ASL, for eight accounts. IIEC/CUB also recommends a different net salvage rate than ComEd for two accounts: 392.02 and 397. IIEC/CUB contends Mr. Andrews' recommendations are more reasonable than Gannett Fleming's when the net salvage data is analyzed, and the practice of other utilities is considered. IIEC/CUB notes its study can be approved in its entirety to replace ComEd's depreciation study, as all depreciable accounts have been studied. IIEC/CUB contends the depreciation rates provided result in a more reasonable and accurate level of depreciation expense for ComEd and better reflect ComEd's assets and retirement data. IIEC/CUB Ex. 1.0 at 33-34.

IIEC/CUB agrees with ComEd witnesses that a full and comprehensive depreciation study should provide fully supported recommendations regarding the ASL estimates and net salvage requirements for each account but contends this is why ComEd's 2019 Depreciation Study is deficient. IIEC/CUB poses ComEd's depreciation study recommends an ASL and net salvage for each depreciable account yet provides no explanation for how it determined these numbers for any account except Account 364. *See* ComEd Ex. 1.13 at 37-40, 44-45. IIEC/CUB notes for the ASL recommendation, ComEd's 2019 Depreciation Study shows only a graph with the ComEd historical data and the proposed survivor curve. *See e.g.*, ComEd Ex. 1.13 at 66. IIEC/CUB contends ComEd's study provides no justification for or explanation of how Gannet Fleming determines the proposed survivor curves. Similarly, for the net salvage rates, the ComEd depreciation study simply presents the net salvage analysis for each account without explanation. *Id.* at 169. In contrast, IIEC/CUB's depreciation study provides a detailed account of all information relied upon to determine every ASL and net salvage rate to be adjusted. IIEC/CUB Ex. 2.0 at 2-3.

ComEd faults Mr. Andrews for adhering too closely to the historical data. ComEd Ex. 11.0 at 8-10, 10-11, 12. IIEC/CUB responds that as its study repeatedly explains that Mr. Andrews obtained, reviewed, and considered the same ComEd interview notes, Gannet Fleming Peer Analysis, as well as historical data in developing his recommendations. Further, IIEC/CUB notes Mr. Andrews' recommendations are closer to Gannet Fleming's than a strict focus on historical data-based calculations would provide. In fact, Mr. Andrews agrees with Gannet Fleming that the best-fitting survivor curves of the historical data for ComEd's accounts would support significantly longer ASLs. However, IIEC/CUB offers, Mr. Andrews recommends shorter ASLs and accordingly higher depreciation rates than he would have were he to have taken the approach Mr. Kozel appears to suggest he did. IIEC/CUB contends that, as generally accepted accounting practices provide, Mr. Andrews used his informed judgment by considering the relevant factors that led to his recommendations. IIEC/CUB Ex. 2.0 at 15.

Account 362 - Station Equipment

Mr. Andrews recommended extending the ASL for Account 362 by 3 years, or 5%, from ComEd's proposed 57 years to 60 years. The historical data indicates that the mathematically best fitting survivor curve has a 75-year ASL. The peer review data from ComEd Ex. 12.03 shows out of the 83 companies, 19, or 23%, use an ASL of 60 years or greater. Sixty years is the second most commonly used ASL for Account 362, with 11 of the 83 peers using a 60-year depreciable life. IIEC/CUB requests that Commission adopt Mr. Andrews' recommended ASL of 60 years. IIEC/CUB Ex. 2.0 at 5-6.

Account 362.02 - HVD Station Equipment

Mr. Andrews recommended extending the ASL for Account 362.02 by 8 years, or 15%, from ComEd's proposed 54 years to 62 years. ComEd provided no information for this specific account, so Mr. Andrews relied on the life analysis he conducted on the historical data, the Gannet Fleming database of depreciation parameters (ComEd Ex. 12.03), and his experience to form his opinion for the best survivor curve for this account. This historical data indicates that the best-fitting survivor curve has a 66-year ASL. The peer review data from ComEd Ex. 12.03 shows that out of the 83 companies, 7 (8%) use an ASL of 65 years, demonstrating that his proposal of 62 years is reasonable for this account. Mr. Andrews expects the higher-voltage distribution substation equipment to have a slightly longer life than lower-voltage distribution substation equipment. IIEC/CUB requests the Commission adopt Mr. Andrews' recommended 62-year life for this account. IIEC/CUB Ex. 2.0 at 6-7.

Account 364 - Poles, Towers, Fixtures

Mr. Andrews recommended extending the ASL for Account 364 by 2 years, or 4%, from ComEd's proposed 50 years to 52 years. For Account 364, the currently approved curve is 49-R1.5. ComEd proposed a movement to 50-R1.5, while the best fitting curve is 52-R1. Gannett Fleming notes several important practices that the Company's engineering department has in place for this account. First, Gannett Fleming notes that the most common pole size/type being installed is a class 2 pole (previously, the most common was a class 3 pole). Mr. Andrews notes lower class poles indicate larger diameters, greater strength characteristics, and therefore improved ability for the poles to withstand lateral loadings during storms (thus longer future ASL). The Company has begun installing C-trusses (steel braces) at the base of poles of a certain age and condition. Mr. Andrews finds this change may provide poles an additional 10 to 15 years of service. Furthermore, Gannett Fleming explains ComEd has begun a pole inspection program in the last five years in order to identify poles that can be repaired or removed from service. Mr. Andrews recommends movement to 52-R1, stating the engineering practices noted by Gannett Fleming all indicate that the future ASL for this account will be greater than the historical data indicates. Gannet Fleming's database of depreciation parameters supports a life of as long as 65 years, and the median service life used is 52 years. IIEC/CUB requests the Commission adopt a 52-year ASL and movement to 52-R1. IIEC/CUB Ex. 1.0 at 25-26.

Account 365 - Overhead Conductor and Devices

Mr. Andrews recommended extending the ASL for Account 365 by 2 years, or 4%, from ComEd's proposed 56 years to 58 years. He maintains nothing in the interview notes would suggest the life for this account should be reduced. In fact, he suggests the notes on page 2 of ComEd Ex. 12.02 show that a 60-year ASL would be appropriate for distribution overhead conductors and devices included in Account 365. The peer review shows that of the 84 companies, 16, or 19%, used an ASL for Account 365 greater than or equal to 58 years. IIEC/CUB requests an ASL of 58 years rather than 56 years. IIEC/CUB Ex. 1.0 at 8-9.

Account 367 - Underground Conductor and Devices

Mr. Andrews recommended extending the ASL for Account 367 by 3 years, or 6%, from ComEd's proposed 53 years to 56 years. ComEd has been conducting cable injections pursuant to EIMA that will extend the life of its cable by 20 years. This new cable will have a longer life than the old rubber or poly insulated cable. ComEd Ex. 12.02 at 24-25. The 56-L0 that Mr. Andrews recommended has the least sum of squared differences compared to ComEd's historical data. IIEC/CUB Ex. 1.1 at 145. With life-extending cable injections and using a more durable cable than in the past, IIEC/CUB asserts it is reasonable to assume that a slight increase in the life of the assets in this account will occur. Review of the peer analysis data (ComEd Ex. 12.03) shows that 16, or 19%, of the 84 peers use an ASL for this account greater than or equal to 56 years. IIEC/CUB requests the Commission adopt Mr. Andrews' recommended 56-L0 survivor curve. IIEC/CUB Ex. 2.0 at 9-10.

Account 368 - Line Transformers

For Account 368, ComEd currently uses a 35-year amortization. Gannett Fleming's database of depreciation parameters indicates that the reasonable range of ASLs for this account is between 35 and 65 years, with 42 being the average ASL utilized. Most utilities do not amortize this account, but rather depreciate it like any other account. Mr. Andrews recommends ComEd amortize this account over 40 years rather than 35 years. IIEC/CUB Ex. 1.0 at 26.

Mr. Andrews recommends that the ASL for Account 368 be extended by 5 years, or 14%, from ComEd's proposed 35 years to 40 years. IIEC/CUB agrees with ComEd witnesses that some transformers in this account could retire early due to corrosion or snowplow damage. IIEC/CUB notes, however, there must also be transformers that live longer than the ASL. That is precisely why mass property accounts are depreciated based on an ASL; some units retire early, some later, but on average, the property retires at the average. IIEC/CUB points out that neither ComEd witness provided any analysis demonstrating that more assets would retire early from corrosion or damage than assets that would live longer than the ASL. Mr. Andrews pointed out that only three peers use amortization accounting for Account 368 and the average life used is 39 years, which is closer to his recommendation than ComEd's. Gannett Fleming's database of depreciation parameters (ComEd Ex. 12.03) indicates that the reasonable range of ASLs for this account is between 35 years and 65 years, with 42 years being the average ASL utilized. IIEC/CUB requests the Commission adopt Mr. Andrews' recommended 40-SQ survivor curve. IIEC/CUB Ex. 2.0 at 10-11.

Account 392.02 Trailers

The net salvage analysis for Account 392.02 put forth in ComEd's depreciation study (ComEd Ex. 1.13 at 198), as well as the IIEC/CUB study (IIEC/CUB Ex. 1.1 at 203), show that over the 10-year period studied, the overall net salvage rate is +31% and even higher over the most recent 5-year period, +38%. IIEC/CUB requests the Commission adopt Mr. Andrews' proposed +20% net salvage rate, arguing it is reasonable because the average over the previous 5- and 10-year periods the actual net salvage incurred has been substantially greater than +20%. IIEC/CUB Ex. 2.0 at 11-12.

Account 392.05 - Trucks less than 13,000 lbs.

Mr. Andrews recommended extending the ASL for Account 392.05 by 2 years, or 20%, from ComEd's proposed 10 years to 12 years. The ComEd Depreciation Study proposed an increase in the life of this account from 9.5 years to 10 years. IIEC/CUB poses if the Company's alleged 8-year replacement policy were driving the life of the assets in this account, the ComEd depreciation study would reflect this and certainly not recommend an increase to the life. The interview notes ComEd cites in support of its recommended depreciation rates do, however, make a telling statement: "don't expect future to be different than past." ComEd Ex. 12.02 at 38. IIEC/CUB asserts ComEd overlooked this statement in its criticism of the life analysis of historical data. IIEC/CUB requests the Commission adopt Mr. Andrews' recommended 12-R1.5 survivor curve, asserting it is the best fit (IIEC/CUB Ex. 1.1 at 206) and a more accurate representation of the life of the assets. IIEC/CUB Ex. 2.0 at 12-13.

Account 397 SCADA, Fiber Optic, and Microwave Equipment

Mr. Andrews recommends moving from 18-S2 to 22-R3. IIEC/CUB contends the data supports a much longer ASL, and the 22-R3 curve is a better statistical fit to the data as evidenced by the sum of squared differences. By that measure, the best fit curve for this account is 32-L2. IIEC/CUB notes fiber optic cable and microwave equipment have longer lives than SCADA equipment. Gannett Fleming's interview notes suggest 20 years for SCADA, 20 to 30 years for fiber optic cable and as long as 50 years for some microwave towers. Gannett Fleming's database for Account 397 indicates lives as long as 45 years for this account are reasonable. IIEC/CUB requests the Commission adopt the 22-R3 survivor curve. IIEC/CUB Ex. 1.0 at 26-27.

Mr. Andrews recommends extending the ASL for Account 397 by 5 years, or 27%, from ComEd's proposed 18 years to 22 years. The total account balance in the depreciation study is $601,691,608; SCADA accounts for 70.9%, Fiber Optic Cable is 22.6% and Microwave Equipment is 6.6% of this account. The interview notes show that ComEd expects SCADA to last 20 years (ComEd Ex. 12.02 at 44), fiber optic cable to last 20 to 30 years (*id.* at 42), and microwave equipment as long as 50 years. *Id.* at 45. Using conservative life expectations of 20 years for SCADA, 25 years for fiber optic cable, and 30 years for microwave equipment, Mr. Andrews calculated a reasonable ASL to be 22 years, consistent with his recommended survivor curve. IIEC/CUB requests the Commission adopt a 22-year ASL. IIEC/CUB Ex. 2.0 at 13-14.

<u>Account 397 - All Communication Equipment sub accounts</u>

Mr. Andrews recommends a -5% net salvage rate for Account 397, largely based on the peer review. Gannett Fleming's database of deprecation parameters (ComEd Ex. 12.03) shows that of the 85 peers, 83 or 98%, use a 0% net salvage rate. The other two companies use a -5% net salvage rate. IIEC/CUB contends increasing ComEd's net salvage rate from the currently approved -5% to ComEd's requested -15% is unreasonable and would be significantly different than what other utility companies utilize. IIEC/CUB requests the Commission adopt Mr. Andrews' recommendation to maintain the -5% net salvage rate. IIEC/CUB Ex. 2.0 at 14.

d. Commission Analysis and Conclusion

ComEd, AG, and IIEC/CUB each present their own depreciation studies for the Commission's consideration. ComEd uses the results of its 2019 Depreciation Study by Gannett Fleming. The AG proposes the rates determined by its witness Garrett. IIEC/CUB propose the rates developed by its witness Brian Andrews. All parties state that there is no dispute with respect to the methodologies used by Gannett Fleming to gather the data used in the deprecation study, nor the sufficiency of the data collected. All parties also agree to use the Straight Line Method, Average Life Group Procedure, and Remaining Life Technique—to calculate depreciation rates for each account. The Commission agrees that the purpose of a depreciation study is to estimate the rate at which existing assets – those currently in service – will depreciate. While the parties agree as to the purpose of these studies and their impacts on assets and rates, the Commission is left trying to determine which method makes the most sense. Section 5-104(c) of the Act states:

> (b) The Commission shall have the power, after hearing, to require any or all electric public utilities to keep such accounts as will adequately reflect depreciation, obsolescence, and the progress of the arts. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property for each electric public utility; and each electric public utility shall thereafter, absent further order of the Commission, conform its depreciation accounts to the rates so ascertained,

> determined and fixed until at least the end of the first full calendar year following the date of such determination.
>
> (c) An electric public utility may from time to time alter the annual rates of depreciation, which for purposes of this subsection (c) and subsection (d) shall include amortization, that it applies to its several classes of assets so long as the rates are consistent with generally accepted accounting principles. The electric public utility shall file a statement with the Commission which shall set forth the new rates of depreciation and which shall contain a certification by an independent certified public accountant that the new rates of depreciation are consistent with generally accepted accounting principles.

220 ILCS 5/5-104(b) and (c). The phrase "generally accepted accounting principles" is undefined. While the AG's proposed adjustments have an impact on the revenue requirement of over $2 million, IIEC/CUB's adjustment of approximately $3.5 million, the dispute as it relates to fifteen actual accounts are over sometimes only a couple of years. For example, IIEC/CUB recommends an adjustment to Account 365 - Overhead Conductor and Devices. ComEd recommends a 56-year ASL and IIEC/CUB suggests 58 years. IIEC/CUB's rationale is that 19% of the peer review companies use 60-year ASL for this account. However, 81% do not use 60-year ASL and IIEC/CUB does not recommend 60, it recommends 58. This analysis simply seems arbitrary, and the Commission is more inclined to agree with the Gannett Fleming analysis. The other nine accounts that IIEC/CUB discusses seem to have equally arbitrary modifications, and the Commission notes that the disputes are insignificant.

The Commission finds ComEd's 2019 Depreciation Study to be reasonable and declines to make any of the AG's or IIEC/CUB's proposed adjustments to depreciation expense. ComEd's depreciation rates are the result of an analysis conducted by an independent third party and have been verified as consistent with accounting standards after review by a second independent third-party. ComEd notes that they were submitted to the Commission in accordance with the Act and were deemed approved by operation of law. While both the AG and IIEC presented their own analysis of the study the Company presented, the Commission finds their modifications to be arbitrary and notes the disputes in rates are insignificant. The Commission concludes the depreciation rates have been appropriately applied in this case, and the resulting depreciation expense is accurately calculated.

VI. RATE OF RETURN

A. Capital Structure

ComEd states it used its actual capital structure as of December 31, 2019 to determine its proposed 2019 Reconciliation and 2021 Initial Rate Year Revenue Requirements. ComEd Ex. 3.0 at 4. ComEd notes that its actual capital structure excludes goodwill, and is comprised of 48.16% equity, 51.79% long-term debt, and 0.05% short-term debt. *Id*. ComEd states its 2019 actual capital structure is consistent with sound financial practice and capital structures that have been found prudent and reasonable for ComEd in the past. *Id*. No party proposed an adjustment to ComEd's capital structure. Therefore, ComEd's actual 2019 capital structure is approved.

B. Cost of Capital Components

1. Rate of Return on Common Equity

ComEd states that its total allowed return on equity ("ROE") is 8.38%. ComEd Ex. 3.0 at 5-6; ComEd Ex. 13.01, Sch. FR D-1. In 2019, ComEd achieved all of its performance metrics, and therefore made no metrics-related ROE adjustment. *Id*. No party contests ComEd's total allowed ROE, and it is therefore approved.

2. Cost of Long-Term Debt

ComEd states that its 2019 cost of long-term debt is 4.31%. ComEd Ex. 3.0 at 5; ComEd Ex. 13.01, Sch. FR D-1, line 12. No party contests ComEd's cost of long-term debt, and it is therefore approved.

3. Cost of Short-Term Debt

ComEd states that its 2019 cost of short-term debt is 2.38%. ComEd Ex. 3.0 at 5; ComEd Ex. 13.01, Sch. FR D-1, line 13. No party contests ComEd's cost of short-term debt, and it is therefore approved.

C. Overall Weighted Cost of Capital

ComEd states that the overall weighted cost of capital in the 2019 Reconciliation Year is correctly determined as follows:

	Weight	Cost	Weighted Cost
Common Equity	48.16%	8.38%	4.04%
Long-Term Debt	51.79%	4.31%	2.23%
Short-Term Debt	0.05%	2.38%	0.00%
Cost of Credit Facilities			0.01%
Total Weighted Average	100.00%		6.28%

ComEd Ex. 13.01, Sch. FR D-1, line 21.

ComEd states that the overall weighted cost of capital in the 2021 Initial Rate year is identical, and correctly determined as follows:

	Weight	Cost	Weighted Cost
Common Equity	48.16%	8.38%	4.04%
Long-Term Debt	51.79%	4.31%	2.23%
Short-Term Debt	0.05%	2.38%	0.00%
Cost of Credit Facilities			0.01%
Total Weighted Average	100.00%		6.28%

Id.

VII. REVENUES

ComEd deducted a total of $149,998,000, after adjustments, in miscellaneous revenues from its revenue requirements. ComEd Ex. 1.0 CORR at 47-48. ComEd Ex. 1.01, App 10; ComEd Ex. 1.01, App 11. None of these revenue items have been contested. The Commission approves ComEd's revenue amount.

VIII. COST OF SERVICE AND RATE DESIGN

Cost of service and rate design are generally not at issue in FRU proceedings but is instead addressed in separate proceedings or through other tariff filings. *See, e.g., Commonwealth Edison Co*., Docket No. 13-0318; *Commonwealth Edison Co*., Docket No. 17-0049. However, Section 16-108.5(c) of the PUA provides that any changes in rate design that result from a separate rate design tariff filing "shall be made at the same time new rates take effect following the Commission's next [FRU] order …, provided that the new rates take effect no less than 30 days after the date on which the Commission issues an order adopting the change." 220 ILCS 5/16-108.5(c).

No party challenged the cost of service, rate design, or the resulting charges. Therefore, they are approved.

A. Updated Embedded Cost of Service Study

ComEd states that its updated Embedded Cost of Service Study ("ECOSS") is based on the ECOSS model that ComEd submitted to Staff in December 2019, in compliance with the Commission's Order in Docket No. 19-0387, and is consistent with the methodologies approved by the Commission in rate design investigations. ComEd Ex. 7.0 CORR at 4; *see also Commonwealth Edison Co.*, Docket No. 17-0049, Order (Jul. 26, 2017); Order on Reh'g (Dec. 20, 2017). The ECOSS was uncontested and is therefore approved.

B. Updated Billing Determinants

ComEd presented historical weather-normalized billing determinants for 2019, which are based on the same methodology used in all of ComEd's rate cases and FRUs since 2009. ComEd Ex. 7.0 CORR at 5; ComEd Ex. 7.02 CORR. ComEd adjusted the number of customers in certain delivery classes consistent with the methodology approved in Docket No. 11-0721, and as directed in subsequent rate design tariff filings. ComEd Ex. 7.0 CORR at 6. The updated billing determinants are uncontested and are therefore approved.

C. Updated Delivery Service Charges

ComEd's updated delivery services charges resulted from populating the rate design model with Commission directives from Docket No. 17-0049. *Id*. at 6-10. The updated charges are uncontested and are therefore approved.

D. Bill Impacts

ComEd presented the class rates of return at the delivery services charges approved by the Commission in Docket No. 19-0387, and the rates of return at the updated delivery services charges, which will be effective beginning in the January 2021 monthly billing period. ComEd Ex. 7.0 CORR at 10; ComEd Ex. 7.04. ComEd also presented an analysis of the overall electric service bill impacts that may result from the application of the updated delivery services charges, compared to the charges effective January 2019. ComEd Ex. 7.0 CORR at 10-11; ComEd Ex. 7.05 CORR.

IX. TARIFF UPDATES

A. SBO Credit Update

ComEd updated the Single Billing Option ("SBO") credit to properly reflect the changes in the embedded costs associated with this credit that are included in the updated ECOSS. ComEd Ex. 7.0 CORR at 13, 14; ComEd Ex. 7.06. No party proposed an adjustment to the updated SBO credit, and it is therefore approved.

B. DLFs Update

ComEd updated its Distribution Loss Study to reflect 2019 customer and zone loads and 2019 transformer data. ComEd Ex. 6.0 at 4-5; ComEd Ex. 6.01. As a result of its updated Distribution Loss Study, ComEd also updated its Distribution Loss Factors ("DLFs"). ComEd Ex. 7.0 CORR at 13, 14-15. The updated DLFs were not contested in this case and are therefore approved.

X. OTHER FINDINGS

A. Original Cost Finding

ComEd requests that the Commission, as it has in past FRU proceedings, approve ComEd's original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2019. ComEd Ex. 1.0 CORR at 67-68. ComEd states that the record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2019 is $23,858,896,000. *Id*. Subtracting capitalized incentive compensation, costs recovered in riders, other costs disallowed in prior Commission orders, and such costs capitalized in 2019 results in the original cost of plant in service requested by ComEd to be approved by the Commission of $23,784,642,000. However, this amount is reduced by $470,000 and $349,000 for the Company's removal of certain 2019 plant additions for community supply and by $610,000 for the Commission's adoption of the additional adjustment to 2019 plant additions for community supply. Thus, the Commission determines the original cost of plant at December 31, 2019 to be $23,783,213,000.

ComEd explains that, as addressed in the Commission's Orders in Docket Nos. 14-0312, 15-0287, 16-0259, 17-0196, 18-0808, and 19-0387, the original cost calculated excludes assets that are recovered through Rider Energy Efficiency Pricing and Performance ("Rider EEPP"), Rider Purchased Electricity ("Rider PE"), and Rider Purchase of Receivables with Consolidated Billing ("Rider PORCB"). As stated in the Commission Order in Docket No. 14-0312, the Commission will make separate original cost findings for these assets excluded from original cost. *See Commonwealth Edison Co*., Docket No. 14-0312, Order at 106 (Dec. 10, 2014); *Commonwealth Edison Co*., Docket No. 15-0287, Order at 6 (Dec. 9, 2015); *Commonwealth Edison Co*., Docket No. 16-0259, Order at 44 (Dec. 6, 2016); *Commonwealth Edison Co*., Docket No. 17-0196, Order at 39 (Dec. 6, 2017).

B. Wages and Salaries Allocator Utilized in Rider PE and Rate BESH

ComEd notes that Staff witness Trost affirmed that ComEd provided the necessary information regarding the value of the wages and salaries ("W&S") allocator to be used in the determination of rates under Rider PE. ComEd Ex. 1.04; Staff Ex. 2.0, 5-6. Ms. Trost also agreed that the W&S allocator applicable to supply is 0.44% and had no objection to ComEd's calculation of the allocator. *Id.*; ComEd Ex. 1.04, WPA-5, page 1, line 1. ComEd agrees with the language proposed by Ms. Trost (Staff Ex. 2.0, 6), and no other party has contested the calculation or objected to the proposed language.

C. Reporting Requirements

1. EIMA Investments

ComEd states it provided evidence in its case-in-chief concerning EIMA-related expenditures and distinguishing between projected plant additions and reconciliation of previous years expenditures. ComEd asserts this data meets the Commission's requirements as set forth in Docket No. 12-0321. *Commonwealth Edison Co.,* Docket No. 12-0321, Order at 98 (Dec. 19, 2012). The Commission's Order in Docket No. 13-0318 noted that ComEd agreed to Staff's recommendation that it identify by category cumulative actual EIMA investments in addition to annual actual investments for each year. *Commonwealth Edison Co.,* Docket No. 13-0318, Order at 85 (Dec. 18, 2013). ComEd states that it provided this data in ComEd Ex. 3.01. No party contests that ComEd has provided the required information. Accordingly, the Commission finds that ComEd has satisfied its investment obligation.

2. Reconciliation Year Plant Additions

The Commission's Order in Docket No. 13-0318 set out a table detailing the plant additions placed into service in the reconciliation year. *Commonwealth Edison Co.,* Docket No. 13-0318, Order at 90-91 (Dec. 18, 2013). In this proceeding, ComEd has provided a similar summary of the investments placed into service under Section 16-108.5 during 2019, by category. ComEd Ex. 3.0 at 19-20. ComEd also provided a similar table detailing the plant additions projected to be placed into service during 2020. *Id.* at 20-21. No party contests that ComEd has provided the required information. Accordingly, the Commission finds that ComEd has satisfied its obligation to provide the required plant addition information.

3. Contributions to Energy Low-Income and Support Programs

The Act requires ComEd to make certain contributions to low-income and other energy assistance programs. *See* 220 ILCS 5/16-108.5(b-10). These contributions included $10 million per year, over five years, in customer assistance costs that are not recoverable. *Id.* ComEd has removed these costs in full from its revenue requirement. ComEd Ex. 4.0 at 25. ComEd states that it has presented evidence demonstrating that its commitments have been met through the sponsorship of various initiatives under ComEd's customer service CARE programs, through which ComEd assists customers that face financial hardship and have difficulty paying their electric utility bills by helping them avoid disconnection. *Id*. ComEd notes that, on January 14, 2020, ComEd filed its Annual Customer Assistance Report for 2017, and that the report specifies the programs that were funded and reports the amount of money each program received, further demonstrating ComEd's compliance with its obligation to fund customer assistance programs. *Id.* at 25. No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by Section 16-108.5. Therefore, the Commission approves ComEd's reporting of Contributions to Energy Low-Income and Support Programs.

D. Marketplace Reporting

1. ComEd's Position

ComEd notes that the AG proposed that the Commission require ComEd to include, in future FRU filings, a list of information concerning Marketplace costs, revenues, products, services, vendors, and visits. ComEd asserts this recommendation should be rejected. ComEd states no other cost or activity is singled-out in this way, and there is no evidence that such a summary is necessary or appropriate.

In addition to being rejected as an improper burden imposed on a single cost, ComEd maintains this proposal lacks any substantive underpinning. ComEd explains that the AG's proposal is premised primarily on the AG's view that the Marketplace should be evaluated based on its profitability. However, ComEd states that the Commission has specifically rejected the proposition that any component of delivery services must be individually profitable in order to be recoverable, finding instead that "the profitability of individual utility programs is not a factor in the Commission's evaluation of prudence and reasonableness." *Commonwealth Edison Co.*, Docket No. 18-0808, Order at 39-41 (Dec. 4, 2018).

ComEd states the AG's proposal also appears to be based, in part, on AG witness Selvaggio's belief that the Marketplace is not sufficiently tied to customer service. However, ComEd maintains that the Marketplace <u>as a whole</u> provides customer service, primarily in the form of information. As a result, ComEd explains, there is no need to tie each product offered on the Marketplace to a customer service objective, as opposed to the overall objective of the Marketplace. Moreover, ComEd notes that many of the products available on the Marketplace can be used to support customers' participation in any one of several ComEd rates, programs, or initiatives, or customers' efforts to manage their energy usage while taking service under Rate BES and without enrolling in other programs. Thus, ComEd concludes it is not clear what value this reporting would provide to the Commission.

2. AG's Position

The AG recommends that, if the Commission includes the Marketplace and Marketplace 2.0 in ComEd's delivery revenue requirement, the Commission should require ComEd to report in its direct testimony in each subsequent FRU a summary of Marketplace 2.0's activity during the given reconciliation year. The direct testimony should include the following information: (1) total expenses (direct and indirect) and offsetting revenues included in the RY; (2) detail of the expenses included in the RY revenue requirement; (3) RY data on the number of total visitors, unique visits, total sessions, total orders, rebated products sold, non-rebated products sold, total products sold, total gross revenue; (4) a listing of the products that were available for purchase during the RY with an indication as to the customer service initiative associated with each product; (5) a listing of the services that were offered during the RY; (6) a listing of the services that were purchased during the RY and the associated customer service initiative associated with the service; and (7) a listing of vendors that sold products/services on Marketplace 2.0 during the RY. AG Ex. 1.0 at 24.

The AG submits that this reporting will enable the Commission to monitor whether the Marketplace platform is serving energy efficiency or delivery services customers or performing a customer service function. The AG refers to the 2017 FRU in which the Commission said that it is important that "the nature or content of the Marketplace will remain sufficiently connected to energy-related customer services so as to qualify as delivery services in the future so that the expenses are recoverable by ratepayers." *Commonwealth Edison Co.*, Docket No. 17-0196, Order at 35 (Dec. 6, 2017). The evidence produced in this docket demonstrates that in fact the Marketplace continues to be primarily a marketplace to sell energy efficiency-related products and services and whatever customer service functions it provides are also found at ComEd.com. Going forward, the AG recommends that the Commission require reporting to ensure that the upcoming Marketplace 2.0 platform provides sufficient customer service benefit for the costs to qualify for recovery from delivery service and that customers are not being asked to subsidize a program that cannot cover its costs and compete with other online markets.

3. Commission Analysis and Conclusion

The Commission has approved recovery of all Marketplace costs and has found ComEd's allocations reasonable, as discussed in Section V.B.1, above. The Commission agrees with ComEd that the AG's proposed reporting requirements are tied to its position that the Marketplace is measured by profitability. Since the Commission has already rejected that argument, the proposed reporting is unnecessary.

XI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

2) the Commission has jurisdiction over the parties and the subject matter herein;

3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations;

4) for purposes of this proceeding, as adjusted, Commonwealth Edison Company's rate base is $11,066,296,000 for the 2019 Reconciliation Year Revenue Requirement and $12,048,960,000 for the 2021 Initial Rate Year Revenue Requirement;

5) the rate of return which Commonwealth Edison Company should be allowed to earn on its net original cost rate base is 6.28% for the 2019 Reconciliation Year and 6.28% for the 2021 Rate Year Initial Revenue Requirement; these rates of return incorporating a return on common equity of 8.38% in each year, on long-term debt of 4.31%, and on short term debt of 2.38%;

6) the rates of return set forth in Finding (5) result in tariffed operating revenues of $2,665,859,000 (reflecting the reconciliation and ROE Collar adjustments) and net annual operating income of $756,765,000;

7) the Commission, based on ComEd's proposed original cost of plant in service as of December 31, 2019, before adjustments, of $23,858,896,000, and reflecting the Commission's determination adjusting that figure, unconditionally approves $23,783,213,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2019;

8) Commonwealth Edison Company is authorized to place into effect tariff sheets and associated informational sheets designed to produce annual tariffed revenues of $2,665,859,000. Such revenues in addition to other revenues will provide ComEd with an opportunity to earn the rates of return set forth in Finding (5);

9) the determinations regarding other subjects contained in the prefatory portion of this Order are reasonable for purposes of this proceeding; the compliance filing to be filed by Commonwealth Edison Company shall incorporate such determinations to the extent applicable;

10) new charges authorized by this Order shall become effective beginning with the first day of the January 2021 monthly billing period consistent with the requirements set forth in Section 16-108.5 of the Act; Commonwealth Edison Company shall be allowed four business days after the issuance of this Order to submit its compliance filing for informational purposes; the new tariff sheets and associated informational sheets authorized to be filed by this Order shall take effect the next business day after the date of filing, with updated charges listed on said tariff sheets, and associated monthly billing

period; Commonwealth Edison Company shall provide supporting work papers to the Staff of the Commission concurrently with such informational compliance filing;

11) that the approved 2021 Initial Rate Year Revenue Requirement includes $3,679,422 of projected plant additions expected to be placed in service in 2020 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in a future formula rate update and reconciliation filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(B)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	$0
Training facility construction or upgrade programs (construction of training facilities program)	$0
Wood pole inspection, treatment, and replacement	$0
Reducing the susceptibility of storm-related damage (storm hardening program)	$0
Total electric system modernization upgrades, modernization programs, and training facilities	**$0**
Additional smart meters	$970,177
Distribution automation and associated cyber secure data communication network	$0
Substation micro-processor relay upgrades	$2,709,245
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	**$3,679,422**
Total projected incremental 2020 plant additions in compliance with Section 16-108.5(b)(1) of the PUA	**$3,679,422**

12) that the approved Reconciliation Revenue Requirement for 2019 includes $20,146,903 of plant additions placed in service in 2019 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. The detail of these actual plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	$0
Training facility construction or upgrade programs (construction of training facilities program)	$0
Wood pole inspection, treatment, and replacement	$0
Reducing the susceptibility of storm-related damage (storm hardening program)	$0
Total electric system modernization upgrades, modernization programs, and training facilities	**$0**
Additional smart meters	$9,632,467
Distribution automation and associated cyber secure data communication network	$7,680
Substation micro-processor relay upgrades	$10,506,756
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	**$20,146,903**
Total projected incremental 2020 plant additions in compliance with Section 16-108.5(b)(1) of the PUA	**$20,146,903**

IT IS THEREFORE ORDERED that the updated charges in ComEd's initial filing shall not go into effect.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file a compliance filing in accordance with Findings (8), (9) and (10) and the prefatory part of this Order, applicable to service furnished on and after the effective date of said compliance filing, with updated charges to be effective with the first day of the January 2021 monthly billing period; work papers supporting the compliance filing shall be provided to the Staff of the Commission concurrently with the filing of said compliance filing.

IT IS FURTHER ORDERED that the approved revenue requirement set forth in Finding (8) above reflects $20,146,902 of plant additions placed in service in 2019 by ComEd, and $3,679,421 of projected plant additions expected to be placed in service in 2020 by ComEd, in compliance with or in meeting the infrastructure investment requirements of Subsection 16-108.5(b) of the Public Utilities Act.

IT IS FURTHER ORDERED that Commonwealth Edison Company's updated Embedded Cost of Service Study is accepted as a basis for setting rates in this proceeding.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain outstanding are hereby disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 9th day of December, 2020.

(SIGNED) CARRIE ZALEWSKI

Chairman

Chairman Zalewski concurs.